

NO. 343251  
Court of Appeals of the State of Washington  
Division III

Spokane Superior Court Case Number 11-3-02519-3

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JONATHAN S. STEINBACH  
Petitioner and Appellant,

v.

JANE E. STEINBACH  
Respondent.

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APPELLANT'S REPLY BRIEF

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### Statutes

RCW 26.19.001
RCW 26.09.002
RCW 26.09.170
RCW 26.19.071
RCW 26.09.140

### Rules

RAP 18.1(d)
RAP 2.2 (a) (1)

## I. Introduction

The appellant brings the following reply to the Responsive Brief of the Respondent. This appeal asks two questions pertaining to a hearing before the Honorable Julie McKay on February 25, 2016. Can the Superior Court invade the sphere of authority of the legislature by using its discretion to exclude the evidence that meets the burden of proof of a significant change of circumstances, thus negating the law allowing a modification for that reason? And, Can the Superior Court impose monetary judgements without consulting the requirements of statutes enacted by the legislature or the provisions of case law widely accepted by the judiciary? What income Judge Triplet imputed to the appellant in 2012, changes to tax exemptions, and the exhaustion of the appellant's financial reserves are not relevant to the decision the appellant is asking this court to make. The Appellant's Opening Brief focused specifically on the trial court's oral ruling, and facts relevant to the issues raised on the record regarding a lack of evidence and the application of res judicata as a basis for terms. The responsive brief covers 51 pages with largely irrelevant and often misconstrued recitations of statements that cannot be supported by the record or were already disproved on the record. It would be impossible, given the narrow confines of this reply, to respond to all 51 pages of irrelevance and subterfuge, so the appellant will respond to the most pertinent as they relate to this case and the preservation of the record.

## II. Reply Argument

A. The responsive brief of the respondent fails to address the primary issues of this appeal. Where in the RCW the legislature outlined its intent for the judiciary to ignore income data in cases similar to this one was not identified. Judge McKay's positive authority allowing her to only consider pay stubs dated after a certain signature was not uncovered. How the two claims can or should be considered one, was not established. How Judge McKay established an adequate record for a finding of intransigence without actually saying the word "intransigence" was not addressed at all. Rather, the responsive brief simply recapitulates the trial court's oral ruling, which remains flawed for all the reasons documented in this appeal, and highlights mistruths and misconduct from previous hearings that cannot contribute positively to a decision by this court.

B. The Superior Court did not produce a record to support a finding of intransigence.

1. Intransigence requires evidence of foot-dragging or obstruction.

Marriage of Pennamen, 135 Wn. App. 790, 807, 146 P.3d (2006). "The party requesting fees for intransigence must show the other party acted in a way that made trial more difficult and increased legal costs, like repeatedly filing unnecessary motions or forcing court hearings for matters that should have been handled without litigation." *Id.*; see also Marriage of Greenlee, 65 Wn. App 703, 708, 829 P.2d 1120 (1992). Unsupported assertions about "intransigence and obstruction tactics" are not a basis for

awarding fees. Marriage of Wright, 78 Wn. App. 230, 239, 896 P.2d 735 (1995). The fact that a family law case involves contested issues does not open a door to an award of fees, absent a showing of specific, inappropriate legal tactics. Id.

2. The first time “Intransigence” appears in this record is in the appellant’s opening brief at page 13. It was not argued by the respondent in declarations or oral argument. It was not stated by either the court commissioner or the trial court. The trial court stated clearly that res judicata was the basis for terms. The trial court incorrectly reported that the commissioner also ordered terms because of res judicata. RP (2-25-16) 29 In. 16-20 and RP (2-25-16) 31 In. 11-14. An adequate record awarding terms for intransigence was not established.

3. res judicata. The November 2014 filing resulted in a final order recognizing the appellant’s income as \$1945.82. This is the result of claim one. The September 2015 filing asserted that circumstances were significantly changed from \$1945.82. This is claim two. The relief sought was the same for both the appellant (he should receive child support) and the respondent (she should receive child support) in both claims. For res judicata to apply, the appellant would have had to claim in September 2015 that he needed a modification because he only earned \$1945.82. That claim had been decided. However, the facts of this case are clearly and unassailably different from this. The appellant’s second claim was that his wages had changed from \$1945.82 to \$1371.68. The responsive

brief does not explain why the two claims should be considered one.

Future claims cannot be barred by res judicata simply because the relief sought was once sought but denied. Furthermore, even a claim correctly dismissed due to res judicata isn't necessarily intransigence when the claim is brought in good faith.

C. Irrelevant data and unsupported facts cannot contribute positively to this decision. However, this is the record and some effort at preserving its integrity is appropriate.

1. RCW 26.09.170 (5)(a).

a. The responsive brief of the respondent states: "Washington statutes do allow a party to file a petition to modify child support. See RCW 26.09.170. But such a petition can be filed only after two years have passed, or if there has been a substantial change in circumstances since the previous order. RCW 26.09.170(5), (7)."

b. The correct quotation for RCW 26.09.170 (5)(a), is "A party to an order of child support may petition for a modification based upon a showing of substantially changed circumstances at any time." This citation can be found at <http://app.leg.wa.gov/RCW/default.aspx?cite=26.09.170>. There is no language in the law suggesting changes that occur during the length of the legal process are outside the mandate that all income be considered (RCW 26.19.071).

2. Imputed earnings from 2012.

a. Earnings data from 2012, whether actual or imputed, is not relevant to the question facing the court for this appeal. The difference between \$1945.82 and \$1371.68 are the only relevant earnings data for this appeal. The current order of child support finds that the appellant earns \$1945.82 per month. The appellant has demonstrated on the record that his actual earnings are \$1371.68 per month based upon all pay stubs from July 2014 through May 2015 (CP 83-95). Is it abuse to ignore the pay stubs that demonstrate this 30% downward shift in earnings? (\$574.14 is 29.506% of \$1945.82)

b. If deemed relevant, the correct narrative follows: It is disputed that the Appellant earned \$14,398.73 per month in March of 2012. It is also verifiable with the record that this is disputed, though not with anything designated by the respondent. The appellant returned from the war in February 2012 and he earned much less than \$14,398.73 per month while on active duty with the Army. This was known to Judge Triplet, the Respondent, and her counsel. Upon his return from the war, the appellant accepted an offer of employment from his pre-war employer, Intuitive Surgical Inc., and Judge Triplet used the financials portion of that offer to impute a wage to the appellant. The offer included an estimate of a full year's wages, bonus, and commission. The court chose to impute because the appellant was clearly changing jobs and his immediate earnings as an Army officer would not be representative of his future

earnings for Intuitive. The question of earnings in 2012 was brought up by the respondent's former counsel (Allen Gauper) during a hearing, and it was disputed on the record. The appellant also objected to this data on the grounds of relevance and the trial court overruled. RP (2-25-16) 12 In. 10-18 The final order of child support signed by Judge Triplet in June of 2012 does not identify the amount as imputed, but that was a typo from the appellant's counsel in 2012. Many typos were corrected, but that one was not.

3. The appellant's 2014 wages of "\$857,000" was known to be false in 2015.

a. The former financial reserves of the appellant, which were shown to be exhausted in the appellant's financial declaration (CP 74), are not relevant to the decision before the court for this appeal. The appellant's financial declaration shows that the financial reserves from his 2014 departure from Intuitive Surgical were exhausted. That financial declaration is all that is required, it is substantiated by supporting documents, and it is in the record. Those are the relevant data for the motion for modification and for this appeal. The appellant is not obligated to provide a precise account of how his reserves were exhausted, as the responsive brief suggests at RB 25, and no such accounting was requested by the respondent.

b. If deemed relevant, the correct narrative follows: This number was known to be incorrect at Comm Chavez's hearing in February of 2015. This number was argued by Allen Gauper and successfully disputed that

very day with financial documents in the record. The appellant explained the nature of Mr. Gauper's error in that hearing. That portion of the transcript was not designated by the respondent. Even Mr. Gauper abandoned this number for the second claim. The "\$857,000" number should not have been included in this appeal record.

4. Changes to tax exemptions were not sought by the appellant or the respondent.

a. The order signed by Judge Moreno, effective 1 January 2015, is in effect and has been honored by both parties. It is that order that claim two seeks to modify. Even though the tax exemptions were altered by Comm. Chavez and Mr. Gauper without a motion to do so, that decision is not relevant to the questions at issue for this appeal.

b. If deemed relevant, the correct narrative follows: The responsive brief of the respondent on page 4 says, "She [respondent] disagreed with, and challenged, Mr. Steinbach's calculation of the federal tax deductions," and on page 14, "Mr. Steinbach's motion to revise the previously ordered award of the dependency tax exemptions was granted." There was never a motion to change tax exemptions by either party. Nowhere in the record is evidence of a request to change tax exemptions. Following Comm Chavez's ruling, she asked Mr. Gauper to draft the order. A copy of the proposed order was mailed to the appellant and it reversed Judge Triplets award of tax exemptions (specifically, Triplet ordered three to dad and one to mom and the proposed order stated one to dad and three to mom).

The appellant went to the presentment on the scheduled date to object to this change without a motion or arguments. Mr. Gauper did not appear before the court at the presentment on March 31, 2015 and Comm Chavez's hand wrote a continuance and asked the appellant to sign it and return the following Tuesday for presentment. She reserved sanctions for Mr. Gauper (CP 353-354). The presentment went forward the following Monday without the appellant present (while Comm Chavez stipulated her typical family court docket of Tuesday the 7th, she wrote Monday the 6th [no ill intent is implied; it seems to be a miscommunication]). Comm Chavez signed the proposed order effecting a reversal of tax exemptions. This precipitated the revision request by the appellant. Before Judge Moreno the appellant pointed out that there was no motion to change the exemptions and there wasn't even an argument to do so. While Judge Moreno did change Judge Triplet's order, she did also revise that portion of Comm Chavez's order to diminish the appellant's benefit, though not to the degree Mr. Gauper's false order did.

5. The appellant having one source of income is consistent with the record and the facts known to the respondent.
  - a. During the period in question, the appellant had two paying jobs. One for the 10th Homeland Response Force and one for the 144th Digital Liaison Detachment. Both jobs were part time and for different divisions of the Washington Army National Guard and, therefore, both paychecks

come from one source: The Defense Finance and Accounting Service, or DFAS.

b. In 2014, Mr. Steinbach started two businesses: One aimed at surgical device distribution and one aimed at green home building. Both businesses cost money to create, and both cost money for training and travel for business activities. Neither business made money. This is why they don't have earnings listed. Also in 2014, the appellant received a small amount from the VA, but because of two deployments to the Oso mudslide and the wildfires, he accrued too many active duty days to receive VA benefits and the payments were suspended for 2015.

6. The appellant has informed the respondent of his financial changes. The suggestion otherwise on RB 22 comes from testimony by Mr. Gauper at the December 21st, 2015 hearing before Comm Pelc. There was a new requirement to do so, ordered by Judge Moreno, and it was complied with. Had the respondent levied that charge on the record in an affidavit, the appellant would have entered the email traffic between the couple to dispute it. That testimony was false and inappropriate then, and it has no place in the appeals record.

7. The four affidavits from Dan Dent, Karen Schmitz, Giju Nair, and Randall Webb were submitted to counter character attacks levied by the respondent's counsel during argument in previous hearings. Those hearings were regarding child counseling and the respondent's contempt of Judge Triplet's order. The affidavits are character references only. Any

attempt to use them otherwise is inappropriate. Any use of them as a financial crystal ball is akin to science fantasy and not relevant to the facts at issue for this appeal.

D. This appeal has been brought in good faith and it has merit. Therefore, an award for legal fees on appeal is not appropriate. This case is completely distinguishable from Mattson, where the record showed intransigence on the part of the appellant in both the trial court and the appeal. The use of Mattson and its antecedents to justify fees in this case is inappropriate. The appellant has a right to appeal, the record supports the appellant's position, even a failed appeal in a case debating such a significant issue of law cannot be construed as frivolous, and this case is debatable between reasonable minds. The request for fees on appeal cannot be supported by the record and should be denied.

### **III. Conclusion**

The question on appeal is about the exclusion of evidence. RCW 26.19.071(1) states that, "All income and resources of each parent's household shall be disclosed and considered by the court." Judge McKay stated plainly that she is only allowed to consider evidence dated after the effective order. (RP (2-25-16) 26 In. 20) She stated, "...and quite frankly, I'm giving you the benefit of the doubt..." Referring to the fact that the April order was not signed until August, but ignoring that it was effective in January. Is she correct in excluding everything dated before the effective order? That is the question. The court does not need to be convinced

that the rapid decline of the Steinbach family's financial security was inconvenient to the trial court. The court does not need to be convinced that the gap between May and September 2015 was caused by an intransigent counsel. Did the legislature intend for pay data to be excluded when they said all earnings will be disclosed and considered? Was Judge McKay's decision not to consider most of the pay data an error? It clearly was. This case has clearly suffered from an outcome bias. Reading the transcript shows that Judge McKay had an outcome in mind, and no evidence and no argument would alter the outcome. This situation can be remedied by the court. The appellant respectfully requests that remedy.

What is being lost in irrelevant arguments about timing and data, is the fact that this motion was filed so a citizen can provide for the basic needs of four children under Washington's jurisdiction. Both parents bear the same legal and moral obligation to support their children, and the court has allowed one to abdicate that responsibility and the court has demonstrated that there are no circumstances during which the interests of children stand above the interests of one parent. It's clear from the record that the appellant was going through a financial crisis, he sought relief from the courts to ameliorate the impact of the crisis on the children and both parents' credit. The law allows for this. It is clear the legislature intended the best interests of children to be at the center of these decisions. Not the date of filing. Not the number of pay stubs. Not the

length of time between filing and hearing. Not the number of jobs a parent has applied for. The trial court chose to paint the appellant's argument into a corner with dates and gaps, and the relief sought, rather than make a decision in the best interests of the children based on the evidence before her. That was an error. The trial court does not have to like the timing of the crisis that befell the family, nor does it have to like the rapidity of the decline in financial security of the family, but the court cannot exclude evidence because the timing offends it. There is a mandate in the law to consider "all" income. No one is more adversely affected by the rapid decline in financial security than the appellant himself. The legislature allows for citizens to ask for a modification at any time in circumstances like this and it places no restrictions on the type of relief sought. This is why this case represents a significant issue at law: Can a court use its discretion in a manner that undermines legislative intent because it dislikes or disagrees with the type of relief sought and/or the timing or nature of a family crisis? Equality under law is an inalienable right that the appellant and his children can expect.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jonathan Steinbach", written in a cursive style.

Jonathan Steinbach  
Pro se  
Appellant

**JONATHAN STEINBACH - FILING PRO SE**

**July 26, 2017 - 3:38 PM**

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**Superior Court Case Number:** 11-3-02519-3

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