

**In the Court of Appeals Division III  
In and for the  
State of Washington**

**FILED**

APR 30 2018

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

**Cause #354164  
Spokane Superior Court #10-3-03141-1**

**In re  
Stacey Ruddick, Appellant/Petitioner**

**And**

**Randall Ruddick, Respondent**

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**Reply Brief**

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## Citations to Authority

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## I. FACTS RELEVANT TO THIS REPLY

As indicated by the father's counsel as relevant to this matter, before the child support modification hearing took place, he was found in contempt for not exercising his visitation in the year 2014. CP 138-144. This caused the mother to miss her needed vacation and so she filed a contempt action against the father, asking for fees, a finding of contempt and for respite care for 2 weeks' child care coverage by certified and qualified professionals for their children to be watched at her home. CP 138-144. This small fact was significant to this appeal since the contempt action brought to bear the issue of the father's visitation expenses, and the attorney's fees for the contempt motion, which fees were reserved by the contempt Commissioner for the child support matter. CP 143-144. Another reason why this was important is that this child support hearing was part of the relocation trial, and was reserved by the trial judge because the parties needed to see what the mother would be earning as the California State care provider for her children. CP 1-4. The contempt matter became even more relevant because the Commissioner, who heard this child support matter also seemed to look at the mother's request for respite care costs (in the contempt) to seemingly justify her imposition of \$4,500 in visitation credits for the father to visit in San Diego. CP 262-266 & 306-309.

The parties presented their financial positions to the child support Commissioner and shedetermined the parties present incomes and eventually drafted a memorandum ruling which included a child support

worksheet signed by the Commissioner. CP 262-266. The Commissioner indicated that she used a reduced figure from those provided by the father in his February 2<sup>nd</sup>, 2016 declaration as his visitation credits. Id & CP 306-309. Mr. Ruddick filed a declaration that set out his expenses for visitation, which came from his 2015 doubled visitation time, were as follows:

- \$ 560.00 for his airfare to and from San Diego;
- \$3,759.84 for his housing expenses;
- \$1,041.58 for his rental car;
- \$ 900.00 for his food;
- \$ 500.00 for "other necessities such as diapers";
- **\$6,761.42** for his 4 weeks of visitation which again included the 2 extra weeks he was ordered to visit due to the contempt order. See CP 225-226.

The father requested a monthly credit of \$500 for his visitation expenses, which again was obtained from his accounting of the costs for his 2015 visit. Id. The Commissioner took this in consideration and ordered that he receive a lesser credit of \$375 a month against his child support, but did not differentiate which items were considered appropriate for a "visitation credit", and which items were not. CP 262-266 & 306-309. In addition, the Commissioner said very little about the fact that the 2015 visit, used to obtain these costs was not only "twice as long as the normal visit" to make up for his failure to visit in 2014. CP 225-226. The final child support amount was made retroactive, even though the father did not visit in 2014. CP 327-333.

The Appellant filed a motion for reconsideration for the Commissioner's consideration for a couple reasons. First, since the time of

the end of the child support hearing and before the ruling, the State of California lowered her children's care payments down to \$3,730.00 a month, just shy of the father's income. CP 327-333. She also asked that the amount of \$375 a month as a child support credit not be used since it was extremely high for just one visit a year, and compensated the father for things that were not allowed by the statute, included things for himself, and the credit he was given was based on his violation of the parenting plan and the contempt orders, hardly making the amount equitable. CP 283-290. The Commissioner granted the new income for the mother, but did not change anything else, including the high visitation credit of \$4,500. CP 306-309.

The mother filed her appeal because the Commissioner abused her discretion in a number of ways, which included a failure to apply the law regarding what was appropriate for a child visitation credit, and she failed to analyze the costs of the father's double visitation.

## II. REPLY LAW & ARGUMENT

- A. The Commissioner failed to follow the statutes on the issue of what should be considered a visitation transportation expense and her determination to use an average of \$375.00 a month for the father's one time visitation annually was an unreasonable application of the statutes on child support and extraordinary expenses.

RCW 26.19.080 (3) states:

(3) Day care and special child rearing expenses, such as tuition and long-distance transportation costs to and from the parents for visitation purposes, are not included in the economic table. These expenses shall be shared by the parents in the same proportion as the basic child support obligation. If an obligor pays court or administratively ordered day care or special child rearing expenses that are not actually incurred, the obligee must reimburse the obligor

for the overpayment if the overpayment amounts to at least twenty percent of the obligor's annual day care or special child rearing expenses. The obligor may institute an action in the superior court or file an application for an adjudicative hearing with the department of social and health services for reimbursement of day care and special child rearing expense overpayments that amount to twenty percent or more of the obligor's annual day care and special child rearing expenses. Any ordered overpayment reimbursement shall be applied first as an offset to child support arrearages of the obligor. If the obligor does not have child support arrearages, the reimbursement may be in the form of a direct reimbursement by the obligee or a credit against the obligor's future support payments. If the reimbursement is in the form of a credit against the obligor's future child support payments, the credit shall be spread equally over a twelve-month period. Absent agreement of the obligee, nothing in this section entitles an obligor to pay more than his or her proportionate share of day care or other special child rearing expenses in advance and then deduct the overpayment from future support transfer payments. (Emphasis added).

This court reviews child support orders for manifest abuse of discretion. *In re Marriage of Booth and Griffin*, 114 Wn.2d 772, 776, 791 P.2d 519 (1990). To prevail on appeal, the mother must show that the trial court's decision was manifestly unreasonable, or was based on untenable grounds or untenable reasons. *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997). "A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard." *Littlefield*, 133 Wn.2d at 47.

The court must apply the statutes properly to insure equitable and fair treatment of both parties under the law. RCW 26.19.001. It is also true that the court has the duty and right to determine the reasonableness and necessity of these extra expenses under the law. RCW 26,19 et seq. Then the court determines that what these costs are and allocates the by percentage as laid out by the child support worksheets. *In re Yeamans*, 117 Wn.App. 593, 600, 72 P.3d 775 (2003); *In re Marriage of Scanlon and Witrak*, 109 Wn.App. 167, 181, 34 P.3d 877 (2001); *In re Paternity of Hewitt*, 98 Wn.App. 85, 88-89, 988 P.2d 496 (1999); *Murphy v. Miller*, 85 Wn.App. 345, 349, 932 P.2d 722 (1997). The court also cannot simply allocate costs of transportation because they were made necessary by one of the parties moves. See e.g. *In re Yeamans*, supra. While the court does have discretion in deviations and setting incomes, it has little discretion in allocation transportation costs. Id.

The statute cited indicates the correct standard for allocation of “long-distance transportation” visitation expenses or extra ordinary expenses is to determine them and then place them in the correct spot in the worksheets. However, the obvious first step is to follow the statute specifically and determine what things are not “ordinary” expenses. To assist with this, RCW 26.18, the enforcement statute for support payments, defined what is considered an “ordinary” duty to support children. It states:

"Duty of support" means the duty to provide for the needs of a dependent child, which may include necessary food, clothing, shelter, education, and health care. The duty includes any obligation to make monetary payments, to pay expenses, including maintenance in cases in which there is a dependent child, or to reimburse another person or an agency for the cost of necessary support furnished a dependent child. The duty may be imposed by court order, by operation of law, or otherwise. RCW 26.18.020(3)" (emphasis added). See *In re Parentage of O.A.J.*, 190 Wn.App. 826, 363 P.3d 1, (Div. 3 2015)

With the above in mind, it seems clear that an ordinary duty of support is that which includes such things as food, clothing, shelter, etc. This describes the make-up of the child support guidelines where it provides the basic costs of raising children at a certain economic level. See RCW 26.19 et seq. Transportation for visitation is specifically not included in the tables and there is no directions within RCW 26.19 as to what that should be, however, it also would appear that it does not include "lodging" or a rental car. Therefore, when the commissioner included a consideration of Mr. Ruddick's excessive lodging expenses to visit his children it was error. There are no cases that support a finding that a very expensive lodging should be included in the package of things that the mother should share the cost of. It seems only logical that lodging is part of the economic tables. The commissioner had no authority under the statute to include that cost in her analysis.<sup>i</sup> It was error to use those items in his list of costs of visitation that are both contemplated in ordinary support, and not mentioned as extraordinary items in the statute.

The Commissioner's decision to use this outline of the costs for Mr. Ruddick's makeup visitation, was error as well, since not only did he get a benefit for taking extra time with the children in 2015, by not having to pay for a 2-week vacation for the mother, he got to use that high amount in arguing what he felt should be included in the concept of his "transportation costs". The Commissioner's use of these expenses in light of how they were incurred, and in light of the fact that there is no statutory authority to use all of them other than the actual airfare was manifestly unreasonable. She stated, in an attempt to justify her ruling on the "transportation" expenses that her ruling of \$375 a month for one 2 week visit was completely appropriate because he was "asking for \$500 a month in travel costs" which included rental car, food, and diapers. (Ironically, the Commissioner also denied the mother's request to include diapers for these disabled children in her side of the worksheet.) See CP 327-333.

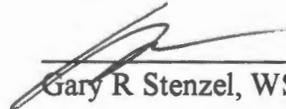
B. Finally, the Commissioner basically ordered that the father needed additional credit for his visitation expenses because he should use this time as a "vacation" or enjoyable time with the children, and seemingly punished the mother for relocating to California, that it was basically her fault that the father had to incur these expenses.

As indicated in the opening brief the Commissioner basically instructed the parties that it was her intent to insure that the father had a special vacation time with the children since he only saw them once a year. She specifically said, "And this two week period he has with the children once a year should be a vacation time with them, and one they look

forward to,” as some kind of justification for her ruling allowing him \$4,500 credit for 2 weeks of expenses. See CP 327-333.

There is nothing in RCW 26.19 that indicates that these funds should be determined in light of creating a fun or vacation time for the visiting parent. However, this too shows the Commissioner’s bias in favor of the father and an attitude that he should be compensated for all his costs no matter what they were. CP 327-333 There is no law in Washington for a child support Judge or Commissioner to order a extra ordinary expense credit for the visiting parent that should be guided by the principle that the visiting parent should be paid enough to have a good time with the children. This was a manifestly unreasonable application of RCW 26.19.080(3).

The court should grant this appeal and either remand the caser back to the Superior Court with instructions or overturn the entire ruling.

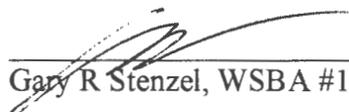
 4-30-18  
Gary R Stenzel, WSBA #16974

#### **Declaration of Mailing**

I, Gary R Stenzel, declare under penalty of perjury pursuant to the laws of the state of Washington that I am now and all times hereinafter mentioned was a citizen of the United States and a resident of Spokane County, State of Washington, over the age of twenty-one years; that on April 30, 2018 affiant enclosed in envelopes a copy of this

Reply Brief to: Jason Nelson, 925 West Montgomery, Spokane, WA  
99205.

Said address being the last known address of the above-named individual, and on said date deposited addressed envelope by regular mail with postage prepaid in the United States Post Office in City and County of Spokane, State of Washington.

  
Gary R Stenzel, WSBA #16974

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<sup>i</sup> The Commissioner did talk about the costs outlined by the father for his lengthy visit, however, she made no findings that the excessive lodging expenses of almost \$4,000.00 along with food and clothing items such as diapers was appropriate. Just taking the rental car cost and airfare would have averaged a figure of approximately \$135.00 a month, a far cry from \$500.00 or \$375.00 a month used in her analysis.