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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III**

NO. 354164

IN RE:

STACY JEAN RUDDICK,

APPELLANT

AND

RANDALL H. RUDDICK, III,

RESPONDENT

BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

The parties have three children from their marriage, Olivia, Randall and Dennis. **CP 5** At the time of entry of the last Child Support Order, (May 23, 2017), the children were ages 12, 10 and 8, respectively. **CP 329** Ms. Ruddick has been the primary parent of the children. **CP 2** All three of the children have been diagnosed with a genetic disorder known as Angelman Syndrome and require substantial developmental treatment care and attention. **CP 2**

In February 2013, the parties concluded a trial on Ms. Ruddick's request to relocate with the minor children from the state of Washington to San Diego, California. The trial court determined that Mr. Ruddick was unable to overcome the presumption in favor of the relocation and, among other findings, the court found that although his reasons for objecting were also important they were not sufficient to balance against the relocation. **CP 2**

On February 15, 2013, the court entered a new parenting plan that took into account the geographical distance and the special needs of the children. **CP 5-11** Primarily the plan allowed Mr. Ruddick residential time during the last two weeks of August each year. **CP 7** The trial court

found that given the distance and the cost of long-distance transportation, a “standard” parenting plan would be impractical to follow. **CP 6**

Regarding the costs of transportation, the trial judge found that both parties presented facts relating to travel costs and that there would no doubt be “expensive” travel costs for the father. **CP 3**

Regarding child support, the trial court ordered that because there was a pending support modification action, the current order of child support would remain in effect until modified and the modification commissioner was ordered to take into account transportation costs as a result of the relocation of the children. **CP 3-4** The trial court further ordered that Mr. Ruddick was to receive the tax exemptions for 2012 and for all subsequent years unless Ms. Ruddick could demonstrate a benefit from the exemptions based on her income, subject to being addressed at the child support modification hearing. **CP 4**

On September 19, 2014, a hearing was held on the petitioner’s motion to have the respondent held in contempt for missing his visit with the children during the summer of 2014. After reviewing the declarations of the parties and hearing the argument of counsel, the commissioner found that Mr. Ruddick could have exercised the summer visit and he was

held in contempt for not doing so. **CP 138-144** Attorney's fees and respite costs for the petitioner were ordered with the amount to be determined at the time of the modification hearing. **CP 143** Mr. Ruddick was able to purge the finding of contempt by exercising his 2015 summer visit. **CP 142, 163** Mr. Ruddick subsequently purged the contempt. **CP 225-226**

On March 26, 2015, the Honorable Maryann Moreno, Superior Court Judge revised the decision of the commissioner as to the respite costs sought by the petitioner. The judge ordered that Mr. Ruddick could offset the respite costs by exercising additional time with the children in California by August 15, 2015. **CP 166** Mr. Ruddick exercised the additional residential time. **CP 225-226**

On February 3, 2016, in preparation for the support modification hearing, Mr. Ruddick submitted a declaration in which he stated that he had incurred visitation expenses in the summer of 2015 in the amount of \$7,161.42 and that he did not believe visitation expenses would be significantly less in the summer of 2016. **CP 226** Mr. Ruddick stated in his declaration that the 2015 visit was for four weeks so he did expect the two-week visit in 2016 to be less in terms of food and necessities but

because he had received an unexpectedly good deal on housing in 2015 he did not expect that expense to change in 2016. **CP 226** On the same date, Mr. Ruddick filed a proposed child support worksheet that included transportation and visitation expenses of \$500.00 per month. **CP 228**

A child support modification hearing was held on February 8, 2016 and a written ruling was submitted on April 22, 2016. **CP 262-266**

In her written ruling, the commissioner found that the both parties agreed that Ms. Ruddick's net income was \$5,141.00 per month. **CP 263**

Relying on Mr. Ruddick's most recent paystub, the commissioner found Mr. Ruddick's net monthly income to be \$3,804.00. **CP 263**

In addressing the costs associated with Mr. Ruddick's residential time, the commissioner found that given the special needs of the children, Mr. Ruddick would need to obtain a "condominium-like" setting for himself and the three children, pay for travel costs to and from California and provide for food and necessities in-home. **CP 263-264**

The commissioner found that Ms. Ruddick alleged that Mr. Ruddick's visitation expenses would not total more than \$1,680.00 per year. However, the commissioner found her testimony to be inconsistent

with her previous claim for respite care for two weeks, which she alleged would total \$4,000.00 for in-home care and \$9,000.00 for out-of-home care. **CP 263-264**

The commissioner found that Mr. Ruddick had provided an accounting of these expenses for his visit in 2013 and 2015, with receipts for the major expenses. **CP 264** The commissioner determined the average yearly costs for the visits was \$4,213.00. **CP 264** Given an expectation that travel costs would fluctuate, the court set the travel and visitation expenses at \$4,500.00 per year and allowed Mr. Ruddick a monthly credit of \$375.00 per month. **CP 264** Taking into account the net incomes and credit, the commissioner set Mr. Ruddick's child support obligation at \$777.00 per month. **CP 264**

On the same date that she issued her written ruling, the commissioner signed and entered a child support worksheet reflecting her ruling. **CP 258-261** The entry of the worksheet was referenced by the commissioner in her written ruling in which she stated, "I have filed a signed child support worksheet that reflects these numbers." **CP 264** The worksheet entered states that it is "signed by the Judicial/Reviewing Officer" and is not designated as a "proposed" worksheet. **CP 258**

No revision hearing ever took place regarding the commissioner's order and worksheet of that date.

On July 15, 2018, a final Order for Child Support was entered reflecting the figures as set forth in the commissioner's worksheet and addressing such issues as a credit for past transportation expenses and the allocation of income tax exemptions. **CP 275-281**

On July 25, 2016, Ms. Ruddick filed a new declaration as part of a motion for reconsideration. In her new declaration, she made new allegations regarding her income, asserted the existence of special expenses not covered by the regular transfer payment and provided testimony regarding what she believed were reasonable transportation and visitation expenses for Mr. Ruddick. Ms. Ruddick also requested additional relief not sought at the time of hearing. **CP 283-290**

Mr. Ruddick responded with his own declaration in which he challenged the timeliness of the motion, the attempt to submit new evidence post-hearing, the attempt to request relief not argued for at the time of hearing and the factual assertions of Ms. Ruddick. **CP 291-296** Ms. Ruddick replied, claiming that some of the information she alleged was not available to her until after the modification hearing. **CP 297-301**

On September 29, 2016, the commissioner entered a written order denying the motions for reconsideration filed by Ms. Ruddick, with the exception of the request to reduce her income. The commissioner then recalculated child support based on the new income figures. **CP 306-309**

On May 23, 2017, the new final Order of Child Support was entered based on the commissioner's ruling of September 29, 2016. Because the commissioner who conducted the hearing and made the subsequent decision on reconsideration was a commissioner pro tem who was no longer serving as such, the final order was signed by another commissioner. **CP 327-333** Thereafter, Ms. Ruddick filed this appeal. **CP 334-345**

ARGUMENT

A trial court abuses its discretion when the trial court's decision is manifestly unreasonable or made on untenable grounds or for untenable reasons. **In re Marriage of Crump**, 175 Wn. App. 1045 (2013). As set forth in **In re Jannot**, 110 Wn. App. 16, 22, affirmed in part, 149 Wn.2d 123 (2002):

The abuse of discretion standard is not, of course unbridled discretion. Through case law, appellate courts set parameters for the exercise of the judge's

discretion. At one end of the spectrum the trial judge abuses his or her discretion if the decision is completely unsupportable, factually. On the other end of the spectrum, the trial judge abuses his or her discretion if the discretionary decision is contrary to the applicable law.

And as stated in In re Marriage of Littlefield, 133 Wn.2d 39, 47 (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.

The trial court's challenged findings are reviewed for a determination of whether there is a sufficient quantity of evidence to persuade a fair-minded, rational person that the premise is true. In re Marriage of Griswold, 112 Wn. App. 333 (2002).

The commissioner did not abuse her discretion regarding transportation and visitation expenses and did not abuse her discretion in denying expenses claimed by Ms. Ruddick

RCW 26.19.080(3) requires the court to allocate expenses not

included in the economic table between the parents in the same proportion as the basic child support obligation. The statute specifically requires the allocation of “special child rearing expenses” and refers to examples of such expenses as “long-distance transportation costs to and from the parents for visitation purposes” and “tuition”. However, long-distance transportation costs and tuition are listed only as examples of special child rearing expenses, not a dispositive list of such expenses. Neither **RCW 26.09.004** or **RCW 26.19.011** specifically define the term “special child rearing expenses. **RCW 26.19.080(4)** gives the court the discretion to determine the necessity for, and the reasonable of, all such expenses.

In **Murphy v. Miller**, 85 Wn.App 345 (1997), the appellate court reversed the trial court’s order that one parent be required to pay the entire cost of transportation for visitation with the minor child. The appellate court ruled that once the determination was made that the costs are necessary and reasonable, the parties were required to share in them in the same proportion as the basic support obligation. **Murphy v. Miller**, at 349.

In **Paternity of Hewitt**, 98 Wn.App 85, (1999), the appellate court addressed the issue of allocating travel costs for a parent when the parent,

not the child, traveled for visitation. The trial court had determined that the cost of the parent's travel to visit the child was necessary and reasonable and should be apportioned between the parents. **Paternity of Hewitt** at 89. The appellate court found that having made that determination, the trial court was required to apportion the expenses in the same proportion as the basic support obligation. **Paternity of Hewitt** at 89. The appellate court further found that the costs of the child traveling for visits, along with a necessary companion, would likely be higher than the costs apportioned by the trial court. **Paternity of Hewitt** at 90. Further the court found that the expense was necessary as the parents resided on opposite sides of the country and neither parent could be compelled to live in a particular location in order facilitate visitation.

In **Marriage of McNaught**, 189 Wn. App 545, a parent appealed the trial court's decision to only allocate the costs of airfare alone and not allocate the parents other expenses such as room and board incurred during long-distance visitation. **Marriage of McNaught**, at 567. The appellate court held that **RCW 26.19.080(3)** specifically requires the allocation of travel expenses "to and from" the location but not all costs associated with long-distance transportation. **Marriage of McNaught**, at

567. Regarding any additional expenses beyond those specifically required to be allocated by statute, the appellate court found that the trial court has discretion to determine the necessity and reasonableness of any such expenses. **Marriage of McNaught**, at 567. Because evidence did not support the trial court's conclusion that such additional expenses were necessary and reasonable, the trial court was correct in denying their allocation. **Marriage of McNaught**, at 567. In particular, the trial court had found that the party seeking allocation had the ability to stay with family in the visitation area and thereby avoid the expense of room and board; hence the expense was not necessary or reasonable. **Marriage of McNaught**, at 568.

In her opening brief, Ms. Ruddick then refers to Division III's unpublished decision in **Marriage of Maulen**, 33275-6-III (2016). In addressing transportation costs in a decision primarily focusing on a trial court's decision regarding relocation, the appellate court referred to the allocation of transportation costs as set forth in **RCW 26.19.080** and the discretion of the trial court to determine the reasonableness and necessity of all amounts ordered in excess of the basis child support obligation. The

appellate court did not prohibit a trial court from determining on a case-by-case basis that visitation-related expenses beyond airfare are reasonable and necessary.

In the present case, the parties have three children with a significant genetic disorder that require substantial developmental treatment, care and attention, as well as ready access to accessible facilities and care providers. **CP 2** In adopting a parenting plan on relocation, the trial judge found that the San Diego, California area offered better access to facilities and professionals, as well as weather conducive to their needs. **CP 2** The judge found that Spokane, Washington did not have such ready access to professionals and facilities, and further found that the weather in Spokane reduces the availability of activities for the children and presented safety concerns. **CP 2** Although not specifically defined by the trial court on relocation, the court found that there would no doubt be travel costs for Mr. Ruddick to exercise his time and that the costs, although not prohibitive, would be expensive. Such costs were ordered to be addressed at the hearing on modification of child support. **CP 3-4.** The trial court did not find that Mr. Ruddick had access to lodging or the ability to offset any other expenses while visiting in

California. **CP 1-4**

In her written opinion regarding the modification of child support, the commissioner found that given the special needs of the children, during visitation time Mr. Ruddick would incur additional expenses. For example, the commissioner found that Mr. Ruddick would require housing with facilities beyond what may be offered in a regular hotel setting. **CP 263** She further found that given the special needs of the children, eating out was not likely to be an option. **CP 263-4** Instead Mr. Ruddick incurs additional expenses for groceries and meal preparation. **CP 263-4**

The commissioner further considered Ms. Ruddick's testimony that respite care for a two-week period of time for her in the state of California would cost \$4,000.00 for in-home care and \$9,000.00 for out-of-home care. **CP 264.** Given her testimony that the full cost of care for the children, including lodging for a two-week period, would be \$9,000.00, the commissioner found Ms. Ruddick's statement at the support modification hearing that such expenses would not total more than \$1,680.00 per year for Mr. Ruddick to be not credible. **CP 264**

In support of his position regarding the expenses the court should allocate, Mr. Ruddick provided an accounting of the expenses he incurred

for visits in 2013 and 2015, along with receipts for the major expenses. **CP 264** The commissioner was aware that the 2013 visit was for two weeks and the 2015 visit was for four weeks. **CP 264** The commissioner then determined the average cost of a two-week visit by dividing the total cost of the 6 weeks exercised in 2013 and 2015 by three, arriving at an average two-week visitation cost of \$4,213.00. **CP 264** The commissioner then adopted an annual figure of \$4,500.00 per year, which was \$1,500.00 less per year than that requested by Mr. Ruddick and \$2,820.00 more than that proposed by Mrs. Ruddick. **CP 264** The cost was then ordered to be apportioned between the parties as a credit to Mr. Ruddick in the child support worksheet. **CP 264**

In her opening brief, Ms. Ruddick attempts to challenge the findings of the commissioner regarding the reasonable and necessary expenses by including in the brief new amounts regarding transportation costs and other visitation expenses. However, the factual allegations made at pages 13-14 of Ms. Ruddick's opening brief were not made at the time of the support modification hearing and not findings made by the court.

What the trial court did have before it were Mr. Ruddick's accountings and receipts regarding visitation that took place in 2013 and

2015, as well as his declaration in which he discussed transportation and visitation costs. **CP 264 and CP 225-226** In particular, Mr. Ruddick detailed the costs for his 2015 visit with the children, including the costs of airfare, automobile expenses, food, necessities and entertainment for the special needs children. **CP 226** Between the time of filing of his declaration and the support modification hearing, Ms. Ruddick did not dispute the information within Mr. Ruddick's declaration.

In the same declaration, Mr. Ruddick stated that the 2015 visit was a longer visit but that he did not anticipate the expenses to change significantly as he had obtained a "good deal on housing" for the four-week visit. At most, Mr. Ruddick stated that the food and necessities, which totaled \$1,400.00 for a four-week visit, would be less for a two-week visit. **CP 225-226** His testimony regarding the expenses was specific and supported by documentary evidence.

Further, although Ms. Ruddick claims in her opening brief that Mr. Ruddick was inflating expenses in order to create a "windfall", the commissioner specifically found that the average cost for the 2015 visit was less than the two-week cost for the 2013 visit. Mr. Ruddick had incurred expenses totaling \$5,471.90 for the two-weeks in 2013. In 2015,

the total cost was \$7,165.86 for four weeks, averaging \$3,582.93 for a two-week period. **CP 264** The commissioner took that into consideration when setting the amount for transportation and visitation expenses at less than what Mr. Ruddick had requested and at more than what Ms. Ruddick had proposed.

The commissioner's determination that the expenses should be allocated between the parents as necessary and reasonable is supported by the evidence. In its decision on the relocation of the children, the trial judge found that there would be expensive costs associated with Mr. Ruddick exercising his residential time with the children. She further determined that the San Diego, California area was a better environment for the children and offered easy access to professionals and organizations needed to address their extensive special needs, as well as assistance from the state of California for medical and social needs. **CP 2** Ms. Ruddick does not argue that Mr. Ruddick should not exercise his residential time in the area deemed safer for the children in this matter; only that he should do so at his expense or at a greatly reduced cost to her. However, under the circumstances of this particular case, the commissioner reviewed the claimed expenses and allocated them based on the expenses being

reasonable and necessary. The requirement to allocate reasonable and necessary expenses is statutory and not an abuse of discretion.

Expenses claimed by Ms. Ruddick

Regarding the expenses claimed by Ms. Ruddick in a child support worksheet and not allocated by the commissioner, the ruling was not an abuse of discretion. As discussed above, the commissioner had the authority to determine that expenses that were necessary and reasonable should be allocated between the parties. However, as the commissioner pointed out in her ruling on reconsideration, Ms. Ruddick did nothing to establish that the expenses were reasonable or necessary other than list the expenses in a child support worksheet. As the commissioner found, unlike Mr. Ruddick, Ms. Ruddick did not provide a declaration regarding the expenses, did not submit any receipts for such expenses and did not support charts or any other reason to suggest why the expenses should be shared by Mr. Ruddick. **CP 307** Whereas in seeking a determination and allocation Mr. Ruddick submitted his declaration, an accounting of the expenses and receipts. **CP 263-4** Absent any evidence submitted Ms. Ruddick, the court could not make the threshold determination regarding

reasonableness and necessity. Therefore, the commissioner's decision to deny the request that Mr. Ruddick contribute to the expenses was not an abuse of discretion.

The commissioner did not demonstrate bias against the petitioner.

The commissioner did not demonstrate bias against the petitioner in referencing Mr. Ruddick's objection to the relocation of the children from the state of Washington to the State of California. His objection to the relocation was a known fact and set forth in the Order on Objection to Relocation. **CP 1-4**

In fact, the commissioner clearly demonstrated a lack of bias against Ms. Ruddick when on reconsideration she granted Ms. Ruddick's request to change her ruling regarding Ms. Ruddick's income. **CP 308** At the time of the support modification hearing, both parties stipulated to a monthly net income of \$5,141.00 for Ms Ruddick. **CP 263** In her motion for reconsideration, Ms. Ruddick alleged a reduction in her monthly income. **CP 308** Mr. Ruddick objected on the basis that the reconsideration request was made more than ten days after the court signed a child support worksheet on April 22, 2016 and that the request was based on allegedly new information that could have been provided to

the court at the time of the support modification hearing. **CP 291-296**

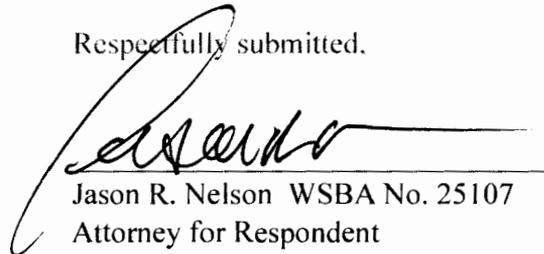
However, the commissioner agreed to consider the new information and agreed to reconsider her decision regardless of the timeliness issue and as a result Ms. Ruddick's net income was reduced from \$5,141.00 to \$3,730.00. **CP 308**

The commissioner also fully considered the other issues raised on reconsideration by Ms. Ruddick. The commissioner denied Ms. Ruddick's request regarding the allocation of the tax exemptions to Mr. Ruddick on the basis that Ms. Ruddick did not demonstrate that she had any taxable income or that she would otherwise financially benefit from the exemptions. **CP 306** The ruling was supported by the evidence before the court. The commissioner also outlined her denial of the motion for reconsideration as to transportation and visitation expenses, as well as special expenses discussed below. **CP 306-309** The rulings were supported by the evidence before the court and appropriate considering the applicable statutes and case-law. There is nothing in the record that supports the claim of bias on the part of the commissioner against the petitioner.

CONCLUSION

The commissioner was not biased against Ms. Ruddick and no evidence in the record supports such a claim. Given the facts and applicable law, the court's determination regarding the allocation of expenses not covered by the basic transfer payment was the correct decision. The commissioner used the correct legal standard and the facts in evidence supported her findings. There was no abuse of discretion. The respondent requests that the appeal be denied.

Respectfully submitted.



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DECLARATION OF SERVICE

I, Cheryl Growt, under penalty of perjury pursuant to the laws of the State of Washington, declare that on this 21st day of February, 2018, I put out via messenger service a copy of this brief to be delivered to attorney Gary Stenzel, 1304 West College Ave LL, Spokane, Washington 99201.

Signed at Spokane, Washington on this 21st day of February, 2018.



CHERYL GROWT, Legal Assistant