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NO. 36992-7

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

JILL J. FLECK,

Appellant,

v.

CHARLES FLECK,

Respondent.

v.

WASHINGTON STATE DEPARTMENT OF
SOCIAL AND HEALTH SERVICES,

Respondent.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. RESTATEMENT OF THE ISSUES 2

A. Did the Administrative Law Judge dismiss the Notice and Finding of Financial Responsibility in the mistaken belief that the Department did not have jurisdiction over child support? 2

B. Is there substantial evidence that Charles Fleck was wrongfully deprived of custody and should not have to pay child support? 2

III. RESTATEMENT OF THE FACTS 2

IV. ARGUMENT 9

A. Role of the Attorney General's Office 9

B. Standard of Review 10

C. The Defense of Wrongful Deprivation Should Be Affirmed if it is Supported By Substantial Evidence 12

D. The ALJ Did Not Dismiss the NFFR Due to the Department's Lack of Jurisdiction over Child Support 15

V. CONCLUSION 21

TABLE OF AUTHORITIES

Cases

Brown v. State, Dep't of Soc. & Health Servs.,
136 Wn. App. 895, 151 P.3d 235 (2007) 18

Callecod v. Washington State Patrol,
84 Wn. App. 663, 929 P.2d 510,
review denied, 132 Wn.2d 1004, 939 P.2d 215 (1997) 11

Cornelius v. Washington Dep't of Ecology,
182 Wn.2d 574, 344 P.3d 199 (2015) 10

Eidson v. Dep't of Licensing,
108 Wn. App. 712, 32 P.3d 1039 (2001) 11

In re Marriage of Aldrich,
72 Wn. App. 132, 864 P.2d 388 (1993) 17

Kauzlarich v. Washington State Dep't of Soc. & Health Servs.,
132 Wn. App. 868, 134 P.3d 1183 (2006) 19

Kraft v. Dep't of Soc. & Health Servs.,
145 Wn. App. 708, 187 P.3d 798 (2008) 11

Port of Seattle v. Pollution Control Hearings Bd.,
151 Wn.2d 568, 90 P.3d 659 (2004) 11

Postema v. Pollution Control Hr'gs. Bd.,
142 Wn.2d 68, 11 P.3d 726 (2000) 10

Tapper v. State Employment Sec. Dep't,
122 Wn.2d 397, 858 P.2d 494. (1993) 11

Taylor v. Morris,
88 Wn.2d 586, 564 P.2d 795 (1977) 20

Statutes

34.05 RCW 10

RCW 26.09.170 20

RCW 26.09.175 20

RCW 26.09.187 19

RCW 26.09.260 19

RCW 26.18.040(3) 19

RCW 34.05.570(1) 10

RCW 34.05.570(1)(a) 11

RCW 34.05.570(1)(a)(d) 10

RCW 34.05.570(3) 11

RCW 74.20.040(1) 16

RCW 74.20.040(2) 16

RCW 74.20.040(4) 16

RCW 74.20.065 ..... 1, 12

RCW 74.20.220(4) 10

RCW 74.20A.030(2) 16

RCW 74.20A.055(1) 17, 18

RCW 74.20A.055(4)(a), (5) 17

Regulations

WAC 388-14A-1020 ..... 16, 17

WAC 388-14A-2000(2) 16

WAC 388-14A-2010(2) 16

WAC 388-14A-2030(2) 10

WAC 388-14A-2099(4) 18

WAC 388-14A-3115 17

WAC 388-14A-3130 17

WAC 388-14A-3130(5) 12

WAC 388-14A-3370(3) 1, 13

WAC 38814A-3370(3)(a) 13

WAC 38814A-3370(3)(b) 13

WAC 388-14A-3370(3)(c) 13

WAC 38814A-3370(3)(d) 13

WAC 388-14A-3903 20

I. INTRODUCTION

The primary issue on appeal is whether Charles Fleck, as the legal custodian, should be required to pay child support from July 18, 2017, forward. If Jill Fleck unlawfully deprived him of physical custody, he can be excused from paying child support under RCW 74.20.065 and WAC 388-14A-3370(3).

Charles Fleck and Jill Fleck[1] are the legal parents of two children, Bryson and Abbey. Since their divorce, they have had several disagreements involving Bryson. Bryson is now 20 years old, but beginning in 2010 and lasting until he turned 18, Bryson was in the sole custody of Charles, with Jill limited to supervised visits.

In 2017, while Bryson was still in the custody of Charles, Jill filed a request for child support with the Department of Social and Health Services (hereinafter the Department). The Department determined Charles's child support obligation and served a Notice and Finding of Financial Responsibility (NFFR) on Charles. Charles objected and, after three separate hearings, the administrative law judge dismissed the NFFR, concluding that Jill had wrongfully deprived physical custody of Bryson from Charles.

[1] For clarity, the parents will be referred hereafter by their first names. No disrespect is intended.

The Department does not represent either parent and thus does not advocate for any particular outcome. In child support cases where neither parent is receiving public assistance, the Department's interest is limited to preserving the forum that it provides for private parties to establish child support obligations. This brief provides the court with the procedural history, relevant facts, and legal standards. The Department takes no position on whether the Administrative Law Judge's decision should be affirmed or reversed.

II. RESTATEMENT OF THE ISSUES

A. Did the Administrative Law Judge dismiss the Notice and Finding of Financial Responsibility in the mistaken belief that the Department did not have jurisdiction over child support?

B. Is there substantial evidence that Charles Fleck was wrongfully deprived of custody and should not have to pay child support?

III. RESTATEMENT OF THE FACTS[2]

Charles Fleck and Jill Fleck are the parents of Bryson, who is now 20 years old, and Abbey, now 17. I Verbatim Report of Proceedings (VRP)[3] at 20; II VRP at 36. Bryson has been the subject of a bitter and lengthy

[2] The recitation of the facts is based on testimony proffered at the administrative hearings in the form of Verbatim Report of Proceedings, and exhibits and documents submitted for the hearings and for Superior Court review. For purposes of this response, the Supplemental Clerk's Papers will be referenced as Exhibits.

[3] The three volumes of the VRP correspond to the three hearings held on February 27, 2018, August 14, 2018, and October 1, 2018, at the administrative level.

custody battle between Charles and Jill, stretching back to at least 2010. Ex. 71-3, 76-7, 97-106; *see generally* I, II, III VRP.

On June 4, 2010, an Amended Parenting Plan was filed in Spokane County Superior Court, granting custody of Bryson and Abbey to Charles on a full-time basis. Ex. 99-106; I VRP at 25. Jill was limited to supervised visits with the children. Ex. 102. This ruling is buttressed by Section 2.2 of the Amended Parenting Plan, which reads: "The mother's involvement or conduct may have an adverse effect on the child's best interests because of the existence of the factors which follow," and circled and initialed by the judicial officer is: "The abusive use of conflict by the parent which creates the danger of serious and substantial damage to the child's psychological development." Ex. 100.

In November 2010, Jill filed a motion to modify her visitation. Ex. 76-7. Given the progress Jill made towards satisfying the court's conditions in the Amended Parenting Plan, *see* Ex. 105, the court authorized expanded visits and telephone calls. Ex. 77. However, in January 2011, the same court reconsidered and ordered that any future visits be supervised, after finding that Jill continued to be a danger to the children's "safety, health and welfare." Ex. 97.

In 2016, Jill filed a motion for Adequate Cause to Change a Parenting Order. Ex. 71. On December 1, 2016, after a hearing, the court

found no adequate cause existed and dismissed Jill's Petition to Change a Parenting Plan. Ex. 71-3. Specifically, the court found that Jill had "meddled in the minor children's relationship with their father." Ex. 73. The court also determined that Jill had "contact with the children in violation of the court order requiring only supervised contact." *Id.* Due to Jill's failure to disclose her unsupervised contact with the children, the court also made a finding of bad faith against Jill. *Id.* Bryson, who had been living with Jill, III VRP at 45, was ordered to be returned to Charles. Ex. 72. The court sanctioned Jill $25 for each day that Jill failed to return Bryson; the court further allowed Charles to file for contempt if Jill refused to comply. Ex. 72.

Charles and Jill have both been ordered to pay child support over the years. On November 28, 2008, Charles was ordered to pay $1,794.24 in past due child support.[4] Ex. 95. In March 2011, a Satisfaction of Judgment was issued by the Division of Child Support, showing that the past due support was either paid in full or no longer collectible. Ex. 95-6. Meanwhile, on August 25, 2011, Jill successfully petitioned the court to modify her child support obligation to $40 per month, $20 per child. Ex. 78-93.

[4] Neither party submitted the 2008 Child Support Order as an exhibit for the administrative hearing.

On July 18, 2017, Jill formally requested child support for Bryson, by filing a non-assistance application with the Department.[5] I VRP at 18-19, 22-23. In the application, Jill claimed that Bryson was living with her, and asked the Department for child support services. I VRP at 22. The Department responded by preparing a Notice and Finding of Financial Responsibility (NFFR). I VRP at 19. The NFFR proposed setting Charles's support obligation at $392 per month, beginning on January 1, 2018. Ex. 49. The monthly support amount was calculated with the use of income figures from Employment Security. Ex. 49-50, 55-62; I VRP at 19-20. The NFFR also proposed setting Charles's back child support at $2,352, for the period of July 1, 2017, to December 31, 2017.[6] Ex. 49.

The NFFR was served on Charles on December 18, 2017. I VRP at 19; Ex. 47. Charles timely objected to the NFFR and requested an administrative hearing. Ex. 45-6; I VRP at 19. The hearing was scheduled for February 27, 2018. Ex. 43. Due to the level of argument and conflict between Charles and Jill, the hearing took longer than expected, and led to a second hearing on August 14, 2018, and a third on October 1, 2018. Ex. 23, 29 (Final Order Finding of Fact 4.19), 35-6; II VRP at 10.

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[5] Jill did not apply for child support for Abbey.

[6] At the administrative hearing, the representative for the Department clarified that the start date for the period of back support should have been July 18, 2017, the filing date of the non-assistance application for child support services. I VRP 23; II VRP 37-8.

At the hearings, Charles testified that Bryson ran away from home in 2016, and Charles went to court in December 2016 to oppose Jill's request to get custody of Bryson. II VRP at 42, 62-3. Jill's request was denied, and Bryson was returned to Charles. II VRP at 42, 63; *see* Ex. 71-3. When Bryson ran away again, both he and Charles filed separate At-Risk Youth Petitions. I VRP at 33. Those Petitions were dismissed in March 2017, after Bryson and Charles reached an agreement. II VRP at 88; Ex. 125-7. In an effort to "smooth everything over" in their relationship, Bryson was not required to live at home but could instead live with friends. III VRP at 20; II VRP at 42, 69-70. Charles admitted that Bryson spent a "couple days here and there" in Charles's home during each month between July 2017 and January 2018. III VRP at 19. Charles claimed Bryson "kind of came and went" and stayed "off and on" with Charles. *Id.* Nonetheless, Charles considered Bryson to be living with him. I VRP at 27. Charles claimed to be the sole provider for Bryson, providing support and paying living expenses while Bryson lived with friends. II VRP at 64, 75. Charles provided school records, Social Security paperwork, and an insurance card, all purportedly showing Charles's address.[7] Ex. 161-5, 174, 177, 178-180;

[7] Addresses and other personal identifying information were redacted from the exhibits.

see II VRP at 46-9, 54-5. When Bryson turned 18, in January 2018, he chose to leave Charles's home for good. II VRP at 95-6.

Both Jill and Bryson testified. Bryson stated he had lived with Jill since September 2016, and in fact had rarely had contact with Charles. III VRP at 28. Bryson denied returning to his father's home at any time since September 2016, and denied ever spending the night there. III VRP at 28-9. Jill testified similarly, that Bryson moved out of Charles's home and into her home on September 8, 2016, and has lived there ever since. I VRP at 38; III VRP at 21. Bryson lived with her every night and day between July 2017 and January 2017. III VRP at 23; I VRP at 41-2. Jill acknowledged that Bryson stayed with friends while Bryson lived with Charles, but said Bryson had not stayed with friends since he came to live with her. III VRP at 23. According to Jill, Charles was "well aware" Bryson was living with her. I VRP at 38. Charles, Jill claimed, had not spoken to Bryson in years and had not provided any support for Bryson. III VRP at 21; I VRP at 38-9. Jill produced numerous documents showing Bryson lived with her, including his driver's license, Social Security paperwork, a food assistance letter, and rental information, all purportedly showing Jill's address.[8] Ex. 117-124, 131-2, 138-140, 148-153; I VRP at 39, 40-1.

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[8] Addresses and other personal identifying information were redacted from the exhibits.

When pressed by Jill to explain his alleged lack of effort to regain custody of Bryson, Charles conceded that he did not go back to court to enforce the Amended Parenting Plan. II VRP at 72. But Charles testified that Bryson had been telling him a very different story. II VRP at 68. Bryson had told his father that he was staying with friends. *Id.* Charles believed Bryson stayed with three different friends. III VRP at 20. As evidence, Charles produced text messages between him and Bryson,[9] III VRP at 42; II VRP at 41-3, 70; Ex. 181-2, and claimed he had "verbal communications between [him] and Bryson and the parents of his friends." II VRP at 94; *see also* II VRP at 42.

Charles and Jill also disagreed about Bryson's enrollment in school. Jill testified at the first hearing in February 2018 that Bryson was in school and expected to graduate in June 2018. I VRP at 40. At the second hearing in August 2018 and the third hearing in October 2018, Charles testified that Bryson was no longer attending school as of March 2018 and possibly earlier. II VRP at 49-50, 66; III VRP 42-3; *see* Ex. 162-5. At the third hearing, though, Jill claimed that while Bryson's school attendance was sporadic, he was in school through June 2018; he ended up two credits shy

[9] Bryson denied the text messages were from him. III VRP at 38-40.

of graduation and returned to school with a new expected graduation date in January 2019. III VRP at 24-6.

The Administrative Law Judge (ALJ) issued his decision on November 2, 2018, in the form of a Final Order. Ex. 23-32. The ALJ noted that while he had jurisdiction over the issue of child support, Ex. 29 (5.1), the Spokane County Superior Court had continuing and exclusive jurisdiction over the issue of custody. Ex. 31 (5.7). The Superior Court had previously and repeatedly ordered that Charles had legal and physical custody of Bryson. Ex. 31 (5.7). Jill's actions, in contravention of those orders, "meddled" in Charles's custody of Bryson, Ex. 32 (Finding of Fact 5.7), and amounted to wrongful deprivation under WAC 388-14A-3370(3)(a). Ex. 31-2 (Findings of Fact 5.6, 5.8). As such, the ALJ dismissed the NFFR issued by the Department. Ex. 32 (Finding of Fact 6.1).

After her Request for Reconsideration was denied by the ALJ, Ex. 1, and her Petition for Review was denied by the Spokane County Superior Court, *see* Order Denying Pet. at 2, Jill now seeks appellate review.

IV. ARGUMENT

A. Role of the Attorney General's Office

In child support actions, the Attorney General represents "the state, the best interests of the child relating to parentage, and the best interests of the children of the state, but does not represent the interests of any other

individual." RCW 74.20.220(4). The Office of the Attorney General does not represent either parent. *Id.* Because no public assistance has been expended for the support of the child., and the State has no direct financial interest in the outcome of this case, *see* WAC 388-14A-2030(2), the State's role is limited. The dispute is between the parents, and the State is, in effect, a nominal party.

B. Standard of Review

The Washington Administrative Procedure Act (APA), chapter 34.05 RCW, governs this appeal. *See* RCW 34.05.570(1). In a review of an administrative decision, the appellate court sits in the same position as the superior court and applies the APA to the administrative record. *Cornelius v. Washington Dep't of Ecology*, 182 Wn.2d 574, 584–85, 344 P.3d 199 (2015) (citing *Postema v. Pollution Control Hr'gs. Bd.,* 142 Wn.2d 68, 77, 11 P.3d 726 (2000)). Questions of law and an agency's application of the law to the facts is reviewed de novo. *Cornelius*, 182 Wn.2d at 585.

Relief under the APA may be granted "only if [the court] determines that a person seeking judicial relief has been substantially prejudiced by the action complained of." RCW 34.05.570(1)(a)(d). The Court may grant relief from an agency's final decision issued in an adjudicative proceeding if it determines that there has been an error in the interpretation or application of the law, substantial evidence does not support the order, or

the order is arbitrary or capricious. RCW 34.05.570(3). The burden is on the party asserting invalidity (here, Jill) to show that the final agency action is invalid. *See* RCW 34.05.570(1)(a).

"Factual findings made by the ALJ are sustained if they are supported by evidence that is substantial in light of the whole record." *Kraft v. Dep't of Soc. & Health Servs.*, 145 Wn. App. 708, 717, 187 P.3d 798 (2008) (citing *Eidson v. Dep't of Licensing,* 108 Wn. App. 712, 723, 32 P.3d 1039 (2001)). Substantial evidence is "a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order." *Callecod v. Washington State Patrol,* 84 Wn. App. 663, 673, 929 P.2d 510, *review denied,* 132 Wn.2d 1004, 939 P.2d 215 (1997). Factual findings are overturned only if they are clearly erroneous. *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568, 588, 90 P.3d 659 (2004).

When presented with a case involving a mixed question of law and fact, such as whether Charles met his burden to prove wrongful deprivation, discussed below, courts conduct a three-part analysis: first, determining whether the factual findings are supported by substantial evidence; second, determining de novo the correct legal standard; and third, applying the law to the facts. *Tapper v. State Employment Sec. Dep't*, 122 Wn.2d 397, 403, 858 P.2d 494. (1993).

C. The Defense of Wrongful Deprivation Should Be Affirmed if it is Supported By Substantial Evidence

Jill challenges the ALJ's conclusion that Charles was wrongfully deprived of Bryson. Charles has the burden of proving defenses to liability, and Jill contends that there was insufficient evidence to support Charles's wrongful deprivation defense. *See* WAC 388-14A-3130(5) (defending parent has burden of proving defense to paying child support).

One potential defense to liability is wrongful deprivation, as provided by statute. RCW 74.20.065. "If the legal custodian has been wrongfully deprived of physical custody, the department is authorized to excuse the custodian from support payments ... for a child or children on behalf of whom the department is providing nonassistance support enforcement services." RCW 74.20.065. Department regulation further specifies that in order to succeed on a defense of wrongful deprivation, the noncustodial parent must establish that:

> (a) A court of competent jurisdiction of any state, tribe or country has entered an order giving legal and physical custody of the child to the NCP;
> (b) The custody order has not been modified, superseded, or dismissed;
> (c) The child was taken or enticed from the NCP's physical custody and the NCP has not subsequently assented to deprivation. Proof of enticement requires more than a showing that the child is allowed to live without certain restrictions the NCP would impose; and

> (d) Within a reasonable time after deprivation, the NCP exerted and continues to exert reasonable efforts to regain physical custody of the child.

WAC 388-14A-3370(3).

In this case, the ALJ concluded that Charles proved he had been wrongfully deprived of Bryson by Jill. Jill challenges whether there is enough evidence to support that conclusion; specifically, whether Charles provided sufficient evidence to prove subsections (c) and (d) of WAC 388-14A-3370(3). Br. of App. at 10. Jill does not dispute the sufficiency of evidence for subsections (a) and (b). *Id.*

Per WAC 388-14A-3370(3)(c), Charles was required to show that Bryson was taken or enticed from his physical custody and that he did not assent to a change in physical custody. Using the definition provided by Jill, "take" is "to get into one's hands or into one's possession, power, or *control*." Br. of App. at 10 (emphasis added). Stretching back to at least 2010, when Charles obtained sole custody of Bryson, Jill has interfered with Charles's relationship with Bryson. Two different judicial officers believed Jill's actions to be of great concern. One limited Jill to supervised visits due to "[t]he abusive use of conflict by the parent which creates the danger of serious and substantial damage to the child's *psychological* development," Ex. 100 (emphasis added), and a danger to the children's "safety, health and welfare." Ex. 97. Another found that Jill had "meddled in the minor

children's relationship with their father," and had not only had unsupervised visits with the children but failed to disclose those visits, leading the Commissioner to make a finding of bad faith against Ms. Fleck. Ex. 73. While it has never been suggested that Jill physically took Bryson against his will, years of interference can lead to a similar result. There is also evidence that Charles did not assent to a custody change, given the court hearings over the years regarding custody. Ex. 71-3, 76-7, 97-106; *see also* I VRP at 28.

There is evidence that Charles made efforts to regain custody of Bryson. Charles and Bryson had an agreement allowing Bryson to stay with friends. III VRP at 20; II VRP at 42, 69-70. Charles believed Bryson was staying with friends based on what Bryson told him, [10] II VRP at 68, and also based on "verbal communications" Charles claimed to have with the parents of those friends. II VRP at 94. Charles may not have become aware Bryson was staying with Jill until the NFFR was served in December 2017. Also, Charles had gone to court in December 2016 to retrieve Bryson from Jill and to reassert his custody of Bryson. Jill knew she was court-ordered to not have unsupervised contact with Bryson yet she continued to willfully

[10] Jill claims the statements made to Charles by Bryson are hearsay. Br. of App. at 11. WAC 388-02-0475(3) permits an ALJ to admit and consider hearsay evidence, and allows an ALJ to base a finding on hearsay evidence "if the ALJ finds that the parties had the opportunity to question or contradict it."

violate those orders. Charles made efforts to regain custody that appear to have been thwarted by the actions of Bryson and Jill.

On the other hand, there is evidence to rebut the claim of wrongful deprivation. Both Jill and Bryson testified that Bryson was living with Jill all along. III VRP at 21, 28; I VRP at 38. There is no evidence Jill physically took or enticed Bryson, who in 2017-2018 was nearly an adult. Jill claimed Charles was "well aware" that Bryson was living with her. I VRP at 38. If so, as Jill points out, Charles made no effort to go to court to regain custody of Bryson, either by enforcing the Parenting Plan or seeking sanctions for contempt. Br. of App. at 12; *see* II VRP at 72. If Charles was not aware that Bryson was living with Jill, Charles still barely thought about where Bryson was living, taking at face value Bryson's claims that he was staying with three different friends, not contemplating that Bryson would go back to Jill's home even though that was where Bryson was living as recently as December 2016.

D. The ALJ Did Not Dismiss the NFFR Due to the Department's Lack of Jurisdiction over Child Support

Jill also contends that the ALJ, in dismissing the NFFR, mistakenly concluded that the Spokane County Superior Court had continuing, exclusive jurisdiction over the issue of child support for Bryson. Br. of App. at 7. While the Department agrees with Jill that the Department had

jurisdiction to issue the NFFR, the Department asserts that Jill misreads the ALJ's order.

The Washington State Legislature has empowered the Department, through the Division of Child Support, to "establish, enforce, and collect" support obligations owed for the care of dependent children. RCW 74.20.040(4); *see also* RCW 74.20A.030(2). The Department is required to establish or enforce support obligations against parents owing a duty of support in cases where public assistance is received on behalf of a child. RCW 74.20.040(1). However, the Department may also establish or enforce support obligations in cases not involving public assistance, upon a request for support enforcement services. RCW 74.20.040(2); *see also* WAC 388-14A-2000(2).

A request for support enforcement services is made by submitting a written application, and can be made by either the custodial or noncustodial parent. WAC 388-14A-2010(2). A custodial parent is a person "with whom a dependent child resides the majority of the time period for which DCS seeks to establish or enforce a support obligation." WAC 388-14A-1020. A noncustodial parent is a natural or biological parent from whom the state seeks support for a dependent child. *Id.* "A parent is considered to be an [noncustodial parent] when for the majority of the time during the period

for which support is sought, the dependent child resided somewhere other than with that parent." *Id.*

In response to a request for support enforcement services, the Department may serve an NFFR on the parent or parents responsible for a support obligation and the custodial parent. RCW 74.20A.055(1). An NFFR is an administrative notice that can become an enforceable order for support, used in cases where paternity is not at issue. WAC 388-14A-3115. If a parent objects to an NFFR, an administrative proceeding could be held, at which the presiding officer determines "the past liability and responsibility, if any, of the alleged responsible parent" and also determines "the amount of periodic payments to be made in the future." RCW 74.20A.055(4)(a), (5); *see also* WAC 388-14A-3130.

The Department can only establish child support administratively when there is no order that either establishes the responsible parent's support obligation or specifically relieves the responsible parent of a support obligation. RCW 74.20A.055(1). The Department "must adhere to a court order when one exists." *In re Marriage of Aldrich*, 72 Wn. App. 132, 138, 864 P.2d 388 (1993).

In this case, the Department was within its jurisdiction to issue the NFFR. Jill filed a non-assistance application for child support with the Department. I VRP at 18-19, 22-23. She sought to have Charles pay child

support for Bryson, claiming Bryson was living with her. I VRP at 22. Although Charles had full custody of Bryson and had been designated Bryson's legal custodian in the parenting plan ordered by the Spokane County Superior Court, *see* Ex. 99-106, Jill could file her application for child support services as the alleged custodial parent.

At the time Jill filed her application, there was not an order in effect that established a support obligation for Charles, or that specifically relieved Charles of a support obligation. RCW 74.20A.055(1); *see Brown v. State, Dep't of Soc. & Health Servs.*, 136 Wn. App. 895, 151 P.3d 235 (2007). In 2008, Charles was ordered to pay $1,794.24 in past due child support, but a Satisfaction of Judgment was issued in 2011, declaring that the past due support had been paid in full or was no longer collectible. Ex. 95-6; *see* WAC 388-14A-2099(4). There is nothing in the record to show that, after 2011, Charles had a support obligation or had been specifically relieved of a support obligation.

The Department responded to Jill's application by preparing and serving an NFFR. I VRP at 19. The NFFR was served on Charles on December 18, 2017, and he timely objected and requested an administrative hearing. Ex. 45-7; I VRP at 19. Over the course of three hearings, both Charles and Jill were able to present evidence. *See* I, II, III VRP. After the

hearings concluded, the ALJ issued a Final Order dismissing the NFFR. Ex. 23-32.

From the initiation of the NFFR to its dismissal by the ALJ, the Department acted well within its jurisdiction and properly followed the requisite statutes and regulations. Jill claims, though, that the ALJ disregarded the Department's jurisdiction in favor of the Superior Court's jurisdiction over child support and custody. Jill points to conclusion of law 5.5 to support her argument. Br. of App. at 7. Conclusion of law 5.5 states:

> A tribunal that has issued a child support order has and shall exercise continuing, exclusive jurisdiction to *modify* its child support order. A tribunal that has made a child custody determination has exclusive, continuing jurisdiction over the determination and any subsequent modifications to custody.

Ex. 30 (emphasis added) (footnotes omitted). Similar language can also be found in conclusion of law 5.7. Ex. 31-2.

The ALJ's conclusions are correct. Courts maintain continuing jurisdiction over child support orders that they issue. RCW 26.18.040(3); *see Kauzlarich v. Washington State Dep't of Soc. & Health Servs.*, 132 Wn. App. 868, 134 P.3d 1183 (2006). Likewise, courts maintain continuing jurisdiction over child custody issues as well. *See, e.g.,* RCW 26.09.187, .260. Meanwhile, "administrative agencies, being 'creatures of statute', possess only such powers and authority as are expressly granted by statute or necessarily implied therein." *Taylor v. Morris*, 88 Wn.2d 586, 588, 564

P.2d 795 (1977). Administrative agencies, such as DCS, have not been granted the authority to modify court-issued child support orders, and must petition a court to do so.[11] *See* RCW 26.09.170, .175; WAC 388-14A-3903. Administrative agencies have not been granted the authority to alter custody arrangements, regardless of whether a court-issued custody order exists.

The ALJ in his Final Order did not say that the Superior Court had continuing, exclusive jurisdiction over the establishment or enforcement of child support. To the contrary, the ALJ determined in conclusion of law 5.3 that "the Department had the authority and jurisdiction" to enter the NFFR in this case. Ex. 30. If the ALJ truly dismissed the NFFR because the Department was without the jurisdiction to establish a support obligation for Charles, the ALJ would not have considered the issue of wrongful deprivation. The ALJ's focus on that defense shows jurisdiction was not the reason for the NFFR's dismissal.

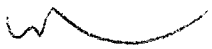
[11] When Jill's own child support amount was modified, she petitioned the court for modification. See Ex. 78-94.

V. CONCLUSION

The ALJ did not dismiss the NFFR due to any lack of jurisdiction, as the Department had the authority to issue the NFFR. Whether or not the ALJ was correct in dismissing the NFFR based on a claim of wrongful deprivation is the question for this court.

RESPECTFULLY SUBMITTED this 18th day of June, 2020.

ROBERT W. FERGUSON
Attorney General



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CERTIFICATE OF SERVICE

I certify that I served all parties, or their counsel of record, a true and correct copy of the Department's Response Brief to the following addresses:

Jill Fleck 12191 East Forrest Ave Spokane WA 99216	☒ US Mail ☐ Legal Messenger ☐ Hand delivered ☐ E-mail:

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 18th day of June, 2020, at Spokane, Washington.

SHAUN REESER
Legal Assistant 4

SPOKANE SHS

June 18, 2020 - 4:25 PM

Transmittal Information

Filed with Court:	Court of Appeals Division III
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Superior Court Case Number:	19-2-00280-2

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