

FILED
Court of Appeals
Division III
State of Washington
8/12/2020 9:20 AM

Cause No. **37263-4-111**

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

VERITY BATTISTA

v.

ALEX SAHA

REPLY BRIEF OF APPELLANT, ALEX SAHA

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Table of Contents

Table of Contents.....i

Table of Authoritiesii

Reply1

A. INTRODUCTION.....1

B. STANDARDS OF PROOF.....1

 1. Respondent claims that Mr. Saha failed to meet a burden of proof as to his income, and therefore dismissal was appropriate, but the current statute provides an alternative route.....1

 2. Respondent claims that substantial evidence supported the dismissal because of Respondent’s failure to provide required documents, but the current statute allows for this failure.....6

 3. Respondent claims the court was able to use its discretion to not impute Mr. Saha’s income and not modify based on the change in Ms. Battista’s income, but the child support statutes do not allow that degree of discretion.....8

C. ATTORNEY FEES..... 10

 1. Respondent’s claim that a finding of frivolous is a sufficient basis for awarding attorney fees, but the law requires more.....10

 2. The case at bar is a first impression issue for Div. III to acknowledge the legislature’s statutory modification supersedes Div III’s *Bucklin* precedent, and therefore the case cannot be deemed frivolous..... 14

 3. Respondent claims that Mr. Saha should be punished with attorney fees for asserting potential immigration bias as the reason for the court’s disparately harsh treatment of him..... 20

 4. The request for attorney fees to Ms. Battista should be denied....22

D. CONCLUSION23

APPENDIX24

TABLE OF AUTHORITIES

Cases

Blair v. Ta-Seattle East No. 176,
171 Wn.2d 342, 254 P.3d 797 (2011)4

Bryant v. Joseph Tree, Inc.,
57 Wn.App. 107, 791 P.2d 537 (1990).....16, 17, 18

Bryant v. Joseph Tree, Inc.,
119 Wn.2d 210, 829 P.2d 1099 (1992)..... 19

Burnet v. Spokane Ambulance,
131 Wn. 2d 484, 933 P.2d 1036 (1997), *as amended on
denial of reconsideration* 5

Doe v. Spokane and Inland Empire,
55 Wn.App. 106, 780 P2d 853 (1989)..... 18

In re Marriage of Bobbitt,
135 Wn.App. 8, 144 P.3d 306 (2006)..... 11

In re Marriage of Bucklin,
70 Wn. App. 837, 855 P2d 1197 (Div. 3, 1993)..... 7, 15

In re Marriage of Cabalquinto,
43 Wn.App. 518, 718 P.2d 7 (1986)..... 21

In re Marriage of Chandola,
180 Wn.2d 632, 327 P.3d 644 (2014)..... 21

<i>In re Marriage of Lyle,</i>	
199 Wn.App. 629, 398 P.3d 1225 (Div. 3, 2017).....	14
<i>In re Marriage of Rockwell,</i>	
141 Wn.App. 235, 170 P.3d 572 (2007).....	8
<i>In re Marriage of Scanlon and Witrak,</i>	
109 Wn.App. 167, 34 P.3d 877 (Div. 1, 2001).....	9
<i>In re Marriage of Wicklund,</i>	
84 Wn.App. 763, 932 P.2d 652 (1997).....	21
<i>In re Recall of Piper,</i>	
184 Wn.2d 780, 364 P.3d 113 (2015).....	10, 11
<i>Jones v. City of Seattle,</i>	
179 Wash. 2d 322, 314 P.3d 380 (2013)	4, 5
<i>Rhinehart v. Seattle Times,</i>	
59 Wn.App. 332, 798 P.2d 1155 (1990).....	17
<i>Santosky v. Kramer,</i>	
455 US 745, 102 S.Ct. 1388 (1982).....	21
<i>Schafer v. Schafer,</i>	
95 Wn.2d 78, 621 P.2d 721 (1980).....	9
<i>Steele v. Steele,</i>	
9 Wn.App.2d 1069 (Div. 2, July 23, 2019) <i>unpublished</i>	7
<i>Teter v. Deck, M.D.,</i>	
174 Wn.2d 207, 274 P.3d 336 (2012).....	4

Timson v. Pierce County Fire Dist. No. 15,

136 Wn.App 376, 149 P.3d 427 (Div. II, 2006) 17

Statutes

RCW 26.09.100 18

RCW 26.09.170 8, 18

RCW 26.19.001 8

RCW 26.19.020 8

RCW 26.19.035 18

RCW 26.19.071 6, 7, 12

RCW 26.19.071 (6)..... Passim

RCW 4.84.185 10, 17

A. INTRODUCTION

The response brief generally reiterates what the hearing judge and commissioner found, claiming the determinations to be within their discretion, but without directly addressing nor responding to the large substantive legal issues of this appeal explaining an abuse of discretion. Appellant replies.

B. STANDARD'S OF PROOF

1. Respondent claims that Mr. Saha failed to meet a burden of proof as to his income, and therefore dismissal was appropriate, but the current statute provides an alternative route.

Mr. Saha's income was guessed at in 2015 at \$10,000 net, per month, clothed in the language of imputation, based on lifestyle and lack of produced verification of financials. *See* CP at 25 ln 23 - 28 ln 24. Respondent correctly notes that Mr. Saha's income was unknown in 2015. Response brief at 7.

Respondent's legal logic breaks down when claiming that Mr. Saha's income is still unknown today, and therefore the "unknown" has not changed and dismissal is appropriate. *See Id.* By statute, an "unknown" to actual earnings requires a different response than dismissal. *See* RCW 26.19.071(6).

In this action, Mr. Saha provided income information in the form of tax returns and bank statements for several years. CP56 -72, 149-335. The court could have used that verified income information to make an income determination. When the court found fault with and refused to utilize the some 280 pages of verified income data and declarations of Mr. Saha to determine his income, then the court was required to impute his income. *See* RCW 26.19.071(6). The court could have chosen either route, in its discretion. The court abused its discretion to refuse both routes.

Two, legally legitimate, non-frivolous routes were available for the court to take in its findings of Mr. Saha's income; the court refused to take either route, blaming Mr. Saha for the court's refusal, calling his petition frivolous and sanctioning him with attorney fees. The court had decided his 280 pages of evidence was not sufficient in quality or quantity to support his petition. *See* Response Brief at 11, citing CP 448. As previously discussed in the opening brief, and not contested in response, it was an abuse of discretion to focus on expenses, rather than verification of income to determine child support. Opening Brief at 13-14. As previously discussed in the opening brief, if a court refuses to believe income data, then it is required to impute income to Mr. Saha. *Id.* at 14-15. Respondent does not cite any post 2009 legal authority contrary to the plain language of RCW 26.19.071 (6), which amended statute requires

imputation according to the statutory hierarchy of choices, if income is not known. *Id.*

Respondent cites CR 41 (b) as a reason for the court to dismiss Mr. Saha's petition. Response Brief at 12. CR 41 (b) states: "Involuntary Dismissal; Effect. For failure of the plaintiff to prosecute or to comply with these rules or any order of the court, a defendant may move for dismissal of an action or of any claim against him or her." Respondent claims that Mr. Saha willfully failed to provide the ordered verification of his income, in violation of the court order and prejudicing Ms. Battista, therefore dismissal was appropriate. Response Brief at 12.

Respondent alleges that petitioner violated the August 7, 2019 order which states: "Mr. Saha must file and serve all materials he wants the court to consider by September 25, 2019." CP 122. In the August 7, 2019 order denying dismissal, the court found that neither party had provided sufficient information to verify income, and had also failed to file required financial declarations. CP 121.

Mr. Saha did not intentionally violate the August 7, 2019 order. Mr. Saha filed and served 263 pages of additional documents, evidence and verification of income, in compliance with the August 7, 2019 order. CP 141-341 and 396-443. Within those documents, he provided his afore missing financial declaration. CP 141-147.

Mr. Saha did file the documents two days later, compared to the timing requirements of the order: filing on September 27th, rather than September 25th. Counsel for the parties had agreed upon and approved of the two day delay, without objection, because counsel for Mr. Saha had been dealing with the tragedy of her mother's death that occurred on September 20, 2019 and an arsonist who had torched and destroyed her garage on September 24th, and her legal assistant quit on the 25th, making the filing on the 25th emotionally and physically impossible. *See* Appx. at 2 noting the timing on all of these disruptions: Motion and Declaration for Extension of due date filed 10/1/19 in appellate case 36577-8 III. Mr. Saha substantially complied with the August 7, 2019 order, and the two day delay was not willful nor objected to. *See* CP 123-321 and CP 396-441.

CR 41 (b) dismissal also requires protocols that were not followed by the court, to dismiss for order violations. Therefore, if the petition was dismissed under the authority of CR 41 (b) it was dismissed with an abuse of discretion under this court rule, as well.

Dismissal under CR 41 (b) violations of orders has been used for willful discovery order violations under CR 37 or a failure to follow local rule on timing. *See e.g. Jones v. City of Seattle*, 179 Wn. 2d 322, 314 P.3d 380 (2013), *as corrected* (Feb. 5, 2014); *Teter v. Deck, M.D.*, 174 Wn.2d 207, 274 P.3d 336 (2012); *Blair v. Ta-Seattle East No. 176*,

171 Wn.2d 342, 254 P.3d 797 (2011); *Burnet v. Spokane Ambulance*, 131 Wn. 2d 484, 933 P.2d 1036 (1997), *as amended on denial of reconsideration* (June 5, 1997).

But here, there were no discovery motions and thus no discovery orders to be violated.

For the failure to follow court orders, court's must apply the *Burnet* inquiry, before it may dismiss. The *Burnet* inquiry requires a court to explicitly consider and find on the record whether a lesser sanction would probably suffice; whether the violation at issue was willful or deliberate; and whether the violation substantially prejudiced opponent's ability to prepare for trial. *Burnet*, 131 Wn 2d at 496-498; *see also Jones*, 179 Wn.2d at 338-341.

Here, there was no order violation; there was no willfulness without an order violation, nor prejudice in this context, and none was found by the court, either. *See* CP 445-449, 727 & RP 32-33. Furthermore, the court did not consider a lesser sanction nor whether the issue that they found to be non-compliance prejudiced the opposing party. *See* CP 445-449, 727 and RP 32-33.

Respondent opines that Mr. Saha is prejudiced by the dismissal at Respondent's Brief at 13, with his inability to have a child support order modified since Nov. 2018. That is prejudice to Mr. Saha over the dismissal. It is not prejudice to Ms. Battista for the failure of Mr. Saha to

follow a court order, (which failure did not occur) but which finding would be required before dismissal.

Neither court made a finding of prejudice to Ms. Battista, contrary to Respondent's response brief. *See* Response Brief at 12. The courts found: "We require a level of proof, and that level of proof is missing, and it appears to be willfully missing." RP at 33, Revising Court. "Mr. Saha's income remains unclear; balance of oral decision incorporated by reference." CP 732, Revising Court. The commissioner found that Mr. Saha's petition was "frivolous" because of "continued failure to provide sufficient verification of his income" after being allowed to supplement the evidence. CP 448, Commissioner. No finding of "prejudice" to Ms. Battista exists in the findings and orders.

2. Respondent claims that substantial evidence supported the dismissal because of Respondent's failure to provide required documents, but the current statute allows for this failure.

Respondent points to no filed pay stubs and no filed profit and loss statements provided by Mr. Saha as a reason to dismiss. Respondent's Brief at 14-15. If a litigant does not have pay stubs and does not have profit and loss statements, he should not be prohibited from bringing a petition to modify, no matter the amount of notice that a court provides in demanding production of things that don't exist. Nothing in RCW 26.19.071 requires profit and loss statements. And, if employee pay stubs

do not exist, they cannot be produced. Nothing in RCW 26.19.071 requires dismissal if a “required” document is not produced. Instead, the statute requires the court to impute income. RCW 26.19.071 (6) “in the absence of records of a parent's actual earnings, the court *shall* impute the parent's income.” RCW 26.19.071(6)(*emphasis added*). Respondent attempts to change the plain mandatory language of RCW 26.19.071 (6) “shall impute,” into discretionary language of allowing imputation, citing to the unpublished opinion of *Steele v. Steele*, 9 Wn.App.2d 1069 (Div. 2, July 23, 2019). But even the *Div. II Steele* court quotes the mandatory “shall” language of RCW 26.19.071 (6) and distinguishes from *Bucklin*, but does not acknowledge or address the statute evolution. The evolution of the “shall” language in the statute was previously addressed in Appellant’s opening brief at 15-17, which was not substantively denied or refuted by Respondent. That statutory evolution has created this issue of first impression on the “shall” language of imputation, specifically superseding Division III’s case *In re Marriage of Bucklin*, 70 Wn. App. 837, 841-842, 855 P2d 1197 (Div. 3, 1993), where dismissal occurred due to failure and inability to produce records, resulting in no proof of income for a modification.

Respondent would like the court to affirm that the relatively new “shall” impute language of RCW 26.19.071 (6) somehow should not apply to Appellant, as the petitioning party. Respondent provides no authority

to support this argument, other than the pre-statute-amendment case of *Bucklin*. Indeed, there is no found post 2009 authority not following the clear terms of the legislature's modified statute. *See* Opening Brief at 15-17.

Since the court did not have the authority to not impute for lack of finding sufficient verification, and also could have made an authentic income finding based on the verifications provided, within the range of evidence, and there were no discovery order violations, the court did not have the statutory authority to dismiss. *See In re Marriage of Rockwell*, 141 Wn.App. 235, 248, 170 P.3d 572 (2007).

3. Respondent claims the court was able to use its discretion to not impute Mr. Saha's income and not modify based on the change in Ms. Battista's income, but the child support statutes do not allow that degree of discretion.

Respondent continues to claim that the trial court did not have a requirement to impute Mr. Saha's income, nor to modify based on Ms. Battista's change in income, as inequitable. Response Brief at 18. A child support modification proceeding is based in law, statutes to be exact, not equity. *See e.g.* RCW 26.09.170; RCW 26.19.020; RCW 26.19.001. Equity is reflected in and incorporated into the child support statutes and schedule. *See* RCW 26.19.001. The court did have a duty to modify, if the statutory criteria are met.

Respondent cites to *Schafer v. Schafer*, 95 Wn.2d 78, 82, 621 P.2d 721 (1980), claiming authority for proof of equity to be applied here. Response Brief at 18. But the equitable consideration in *Schafer* concerned potential credits and offsets against back child support owed – which was not a statutory right, at all. *Id.* *Schafer* is not on point, addressing issues outside the realm of statutes.

Respondent cites *In re Marriage of Scanlon and Witrak*, 109 Wn.App. 167, 173-74, 34 P.3d 877 (Div. 1, 2001) as precedent to support the assertion that the court properly exercised discretion to not allow a modification based on the “nominal change” in Ms. Batita’s income. Response Brief at 18. *Scanlon* does not address a nominal change. It discusses the difference between a modification and an adjustment in child support, noting that adjustments are used when changes in child support are based solely on income changes, and not substantial changes of circumstances not contemplated at the time of the other order. *Scanlon*, 109 Wn.App. at 172-173.

Here, a change in income that changed child support, even a little, deserved an adjustment; no case law and no statute sets a lowest quantum for an adjustment in child support based on changes of income after two years.

The court had a duty to follow the plain language of the statutes to modify child support, and erred when it did not. Reversal is requested.

C. ATTORNEY FEES

1. Respondent claims that a finding of frivolous is a sufficient basis for awarding attorney fees, but the law requires more.

Petitioner noted that neither the court nor counsel cited to any specific law for its attorney fees award at the time of the petition for modification. In response, Respondent cites to her motion to dismiss, which was earlier denied. *See* Response Brief at 20. She also cites to her response to petition at CP 78. *See* Response Brief at 19. But there was no request for attorney fees in the Amended Response to Petition, there was only an objection to paying Mr. Saha's attorney fees. *See* CP at 74 (Amended Response at 2).

Nonetheless, Ms. Battista then asserts CR 11 and the court's inherent equitable powers, to authorize the award of attorney fees. Respondent asserts meeting the CR 11 criteria when "Petitions are intentionally frivolous and filed in bad faith." Response Brief at 20-21, *citing In re Recall of Piper*, 184 Wn.2d 780, 787, 364 P.3d 113 (2015). The *Piper* court said, "a court may award attorney fees if the action was frivolous and advanced without reasonable cause. RCW 4.84.185." It notes that RCW 4.84.185 does not allow sanctions for a merely frivolous petition, it has to be something more, such as an *intentionally* frivolous petition brought for the purpose of harassment. *Piper*, 184 Wn.2d at 787. The bad

faith element must be included to trigger the equitable powers of sanction. *Id.* Indicia of bad faith might include harassment, causing unnecessary delay, or needlessly increasing the cost of litigation. *Id. citing* CR 11 (a)(3).

Ms. Battista also cites to *In re Marriage of Bobbitt*, 135 Wn.App. 8, 29-30, 144 P.3d 306 (2006). Response Brief at 20-21. *Bobbitt* explains that the court must include findings when attorney fees are awarded. *Bobbitt* also defines intransigence as “foot dragging and obstruction, filing repeated unnecessary motions, or making the trial unduly difficult and costly by one’s actions.”

Although the Response Brief is filled with claims that intransigence occurred, it fails to cite to anywhere in the record, where it actually occurred. The court did not find “intransigence.” The commissioner concluded that Mr. Saha’s petition was frivolous because Mr. Saha did not ultimately provide the verification of income that the Commissioner wanted to see. Response Brief at 20, *citing* CP 448. Mr. Saha’s behavior within his Petition to Modify does not support a finding of intransigence.

Can someone who does not have hourly pay as an employee, with no pay stubs, ever receive a modification of child support? Can a business owner who does not have profit and loss statements ever receive a modification of child support? Can a person who is under a restraining

order receive a modification of child support? And ultimately, can a person whose income is not easy or clear to calculate, since they are not an hourly rate paid employee, receive a modification in child support? Under RCW 26.19.071, the answer to all of these questions is “yes.” But in the case at bar, the answer to all was “no.”

In all the 280 pages of evidence that Mr. Saha provided, there was no indicia that he made an average of \$10,000/month net income, as was last “imputed” to him three years earlier. *See e.g. CP 404 summarizing Saha’s 2018 and 2019 deposits into his personal account which bank account statements are also complete and in the record within CP 166 - 366.* The evidence consistently showed he made less than ½ that monthly amount. All of the 280 pages of evidence supported a finding that Mr. Saha made far less than \$10,000 net per month and had verifiably supported an adjustment in child support downward – whichever way the court allowed the adjustment to occur – whether by imputing income in a legally acceptable manner, or finding an average rate of income.

There is no basis to claim that Mr. Saha’s requests for a child support modification was either frivolous or filed in bad faith. His original child support worksheet numbers were derived from his filed tax return, as the verification. *Compare* CP 50 and 56-72. The alternative child support worksheet at the time of child support hearing figures were

derived from average deposits into his personal bank account, as the verification. *See* CP 25 ln 23 - 28 ln 24, CP 396 and CP 404. And, if the court was unwilling to accept the verification provided, then the court should have imputed Mr. Saha at the median income level, since the previous figure of \$10,000 was based on a guess. *See* RCW 26.19.071(6). The Response brief does not address or counter these truths, it only quotes the judicial findings, which findings have been challenged here.

If anyone has filed motions in bad faith it would be Ms. Battista's motion to dismiss, when she was missing as much or more income verification data as Mr. Saha, was, by August 2019. *See* commissioner's order on dismissal, CP 121 (explaining neither party had filed sufficient verification data and were not ready for final hearing), *but see* Response Brief at 21, blaming the deficiencies in income verification completely on Mr. Saha.

The response brief alleges that Mr. Saha's dishonesty, foot dragging and obstruction supports a finding of a bad faith petition. Response Brief at 21. There is no citation to the record where any such behaviors occurred, or were found against Mr. Saha. Rather, the record shows that Ms. Battista took three months to answer her discovery requests. CP 400. And, when she did, they were so redacted as being

almost useless. *See e.g.* Ms. Battista's answer to Interrogatory 18. CP 509-687.

Ms. Battista cites to claimed issues with Mr. Saha at the time of the original trial as a reason to find harassing and bad faith behavior with the modification request. Response Brief at 21, *citing* CP 343-344. Mr. Saha replied to all such allegations, which, seemed to be irrelevant and only designed to prejudice the court against him. *See* Reply Declaration of Mr. Saha, CP 396-401. As addressed in the opening brief, current evidence is relevant in a modification action, not the past. Opening Brief at 11.

2. The case at bar is a first impression issue for Div. III to acknowledge the legislature's statutory modification supersedes Div III's *Bucklin* precedent, and therefore the case cannot be deemed frivolous.

The Response Brief misses the point regarding the first impression issue. Ms. Battista cites to *In re Marriage of Lyle*, 199 Wn.App. 629, 631, 398 P.3d 1225 (Div. 3, 2017) claiming the case affirms a dismissal of a child support modification action, on revision. Response Brief at 22. In fact, the case shows the judge revised a commissioner's dismissal on adequate cause, found a substantial change of circumstances and modified the child support order. The court of appeals affirmed. *Lyle* does not apply and stands for the opposite proposition to that claimed by Respondent.

The issue of first impression concerns the requirement to apply the imputation section, with the “shall” language of RCW 26.19.071(6) to a petitioner’s modification, if the court refuses to accept the provided verification information to make a finding of income. This 2009 change in RCW 26.19.071(6) supersedes the 1993 *Bucklin case* due to the legislature’s statute amendment. *See and compare, In re Marriage of Bucklin* 70 Wn.App. at 841-42 and RCW 26.19.071(6). The statute supports the conclusion that a petitioner should receive a modification based on proper imputation standards, rather than dismissal, when the court is not satisfied with the verification provided. RCW 26.19.071 (6).

With the either or caveat, the court does not have the option to dismiss with a finding of bad faith merely for its determination of insufficient income verification at the child support modification hearing. The court is directed to impute, which may result in an income and child support adjustment. As noted *supra* at 4, the bad faith failure to provide information to dismiss would have to occur in the context of a clear violation of an order or discovery order under CR 37, as authorized under *Burnette* and progeny. *See supra* at 4. That kind of scenario does not exist in the case at bar.

Here, Mr. Saha could not produce profit and loss statements and could not produce pay stubs, because they do not exist, because he doesn’t have them and never had them, not because he refused to produce them.

See Mr. Saha's Reply declaration at CP 398. A failure to provide that which does not exist and never existed simply cannot equate with bad faith. Mr. Saha provided what did exist: copies of bank statements and copies of tax returns. Consistently, the court did not make a finding of "bad faith." It only made a finding of "frivolous petition" for failure to provide sufficient information so that the commissioner's questions about expenses could be answered within the verified documents. *See CP 446-448.* The revising court in upholding the dismissal, stated in its oral ruling that the required level of proof of a change in income was missing and appeared to be "*willfully*" missing. RP 33. Willfully not filing unspecified "other verification" data (such as not filing his wife's bank account statements when they were not knowingly relevant, pre-hearing, in addition to not filing documents that simply do not exist) cannot automatically equate with bad faith, either.

CR 11 sanctions may occur if the pleading does not have merit, either factually or legally. Here, there appears to be a claim that the petition was *factually* frivolous with the ultimate finding of unsatisfactory proof. To be factually frivolous, "a competent attorney, after reasonable inquiry, could not form a reasonable belief that the complaint was well founded in fact." *Bryant v. Joseph Tree, Inc.*, 57 Wn.App. 107, 115, 791 P.2d 537 (1990). From the time of the filing of the petition, the child

support worksheets were based on Mr. Saha's tax returns, providing verification that Mr. Saha's request had merit, factually. CP 50 and 56-72.

Additionally, by the time of revision, Mr. Saha showed that despite the concern for his alternate verification of income, his petition had factual basis from Ms. Batitsta's increased income as well as legal merit in the request for imputation of income – which would still allow for a modification based on imputation at the median income of US workers his age and sex. *See* RP 13-18. As noted in the Opening Brief at 7 and as found in *Bryant.*, 57 Wn.App. at 116, “the record is devoid of any evidence from which the trial court *could* have determined that the complaint lacked a factual and legal basis.”

The response brief cites to *Timson v. Pierce County Fire Dist. No. 15*, 136 Wn.App 376, 386, 149 P.3d 427 (Div. II, 2006) to suggest that attorney fees awarded with a finding of a frivolous lawsuit is entirely within the court's discretion. Response Brief at 22. It is true that the filing of truly frivolous lawsuits can result in attorney fees awarded to the defender for the cost of defending a meritless case. *See Id.* But this appeal contests the finding of “frivolous.” As the *Timson* court notes, “If an action can be supported by *any rational argument*, then the trial court properly exercised its discretion in not finding an action to be frivolous.” *Id.* (citing *Rhinehart v. Seattle Times*, 59 Wn.App. 332, 340, 798 P.2d 1155 (1990) and RCW 4.84.185.)

Here, Mr. Saha and his attorney have presented rational arguments that this petition to modify was legally and factually sufficient. For example, more than two years had past, and the court could have made findings of Mr. Saha's income within the range of the verified data; the court could have imputed income at the national average, the court could have modified child support. *See e.g.* RCW 26.19.035; RCW 26.09.170; and RCW 26.09.100. The mere fact that a claim does not prevail or that a lawyer's view is deemed to be wrong is insufficient for sanctions under CR 11. *Bryant*, 57 Wn.App. at 116(citing *Doe v Spokane and Inland Empire*, 55 Wn.App. 106, 111, 780 P2d 853 (1989)).

Here, there was simply no legal or factual basis to determine Mr. Saha's petition was frivolous.

Respondent claims that Mr. Saha moving from overseas to California is a mere passage of time. Respondent's Brief at 23. An intercontinental move has no correlation to mere time, other than it takes time. Mr. Saha's move was one of the matters limiting his income, causing a change to his income, and creating the equitable desire to receive a tax exemption via a modification action, since Mr. Saha would be filing US tax returns while living in the U.S. CP 45.

Ms. Battista claims that Mr. Saha was put on notice of the attorney fees request when an opportunity was provided to respond to the reasonableness of the fee bill, after attorney fees were ordered. Response

Brief at 23-24. That is not the meaning of notice and opportunity to respond to a “frivolous” claim. A finding of “frivolous” could correlate to attorney fees and CR 11 sanctions as suggested by the Response Brief at 20.. CR 11 sanctions require evidence on the inquiry by the attorney into the factual and legal basis of a claim. *See Bryant v. Joseph Tree, Inc.* 119 Wn.2d 210, 220 and 224, 829 P.2d 1099 (1992). That kind of information is not the normal information presented to a court on the merits of a motion for child support modification. Therefore, notice should have been provided to allow for presentation of the attorney’s pre-filing work to show the non-frivolousness of the petition.

Here, had opportunity been provided, it would have been easy to highlight how the original WSCSSW and Mr. Saha’s tax return corresponded, to show the factual basis and attorney’s appropriate investigation into the factual basis for the modification at the time of filing. *See* CP 50 compared to CP 56-72. At the time for the motion to revise, no new evidence could be provided, so revision was also not an appropriate time to provide the necessary attorney investigation evidence, to address a motion for a “frivolous” CR 11 finding.

The lack of following process resulted in the court not making appropriate findings.

3. Respondent claims that Mr. Saha should be punished with attorney fees for asserting potential immigration bias as the reason for the court's disparately harsh treatment of him.

Respondent suggests that Petitioner "asserts that there is impermissible biasness against him, and that he has received disparate treatment." Response Brief at 25. Appellant corrects that assertion. Counsel for Appellant raised it *as a possibility* to explain the difference in the court's treatment of Ms. Battista and Mr. Saha, even due to effects of implicit bias. Appellate Opening Brief at 29 and RP at 18.

Respondent claims the subject was frivolous and inappropriate, without evidence. Opening Brief at 26. Although direct evidence of such things as name calling is not present, the difference in treatment is undeniable and reference to rich foreigner ideas are present. The court did consider his own ideas in this vein, based in speculation, not evidence, that Mr. Saha was the recipient of trust funds and had overseas investments. RP 31 lines 2- 7, 13 lines 1-6. Petitioner asserts such comments are indicia of inherent prejudice towards Mr. Saha as an immigrant, to explain the disparate treatment. *See* RP 13 ln 2-6; RP 18 lines 22-25 and the court's reaction at RP 19 lines 1- 6. In contrast, Mr. Saha had, under oath, described the lack of wealth and inheritance from his immigrant family, when his late father could not work as a doctor in this country, as well as his lack of overseas bank accounts. CP 396-397. The

court refused to accept any testimony by Mr. Saha. See RP at 13, lines 5-6 and RP 33 lns 15-18.

The supreme court in *In re Marriage of Chandola*, 180 Wn.2d 632, 656, 327 P.3d 644 (2014) showed legal limits in discretion protecting litigants from family law judges utilizing arbitrary impositions of their personal opinions. Two examples are noted in *Chandola*, of judicial officer's personal opinion's unfairly restricting parental rights such as a court's disapproval of homosexuality exposure to children or a court finding too much grandparent involvement per the father's habits, which appeared to have stemmed from his native cultural. *Id.* at 655 citing *In re Marriage of Wicklund*, 84 Wn.App. 763, 770-71, 932 P.2d 652 (1997); *In re Marriage of Cabalquinto*, 43 Wn.App. 518, 519, 718 P.2d 7 (1986) and *Santosky v. Kramer*, 455 US 745, 762-63, 102 S.Ct. 1388 (1982) (“noting that in the family law context minority groups are particularly ‘vulnerable to judgments based on cultural or class bias[es]’”)

Petitioner's soft lobbying the issue at oral argument as only a potential (RP 18 lines 21-25) was intended to direct awareness, not accuse, such as addressed within *In re Marriage of Chandola*: “We do not mean to imply that the trial court here was motivated by bias or cultural insensitivity; we conclude only that . . . “ court's need to be careful and not impermissibly restrict people's legal rights, especially when cultural differences are at hand. *See Id.* at 655. The court should be more careful,

not less careful, when issues of potential bias exist or are raised. *E.g.* RP 19 lines 1-9.

4. The request for attorney fees to Ms. Battista should be denied.

Ms. Battista seeks attorney fees because she claims the appeal is frivolous and because Mr. Saha's makes \$10,000/month net income, while she has need. *See* Response Brief at 26-27. Ms. Battista's request illustrates the damages judicial errors make. Errors perpetuate more errors. Had the court correctly made a finding of Mr. Saha's income within the range of verified evidence, or according to the median census figures of imputation, no attorney fees would have been ordered in the first place, no appeal would have been necessary, and the erroneous and dated expectation that Mr. Saha makes \$10,000/net income would not be creating havoc. The record shows, within the range of verified income evidence, Mr. Saha has no ability to pay Ms. Battista's attorney fees. Mr. Saha cannot even pay his own attorney fees. *See* Attorney's Response to Financial Declaration, filed previously.

Mr. Saha's petition to modify child support and this appeal are anything but frivolous. Mr. Saha's appeal, generally, is based on superseding legal authority and the abuse of discretion in awarding attorney fees.

Mr. Saha requests the court deny Ms. Battista's request for attorney fees.

D. CONCLUSION

Respondent fails and refuses to address the issue of superseding statutory authority to *Bucklin*, which superseding authority requires imputation for unknown income findings, even to a petitioner in a modification action. Respondent fails to address all the finding errors.

Mr. Saha's petition for modification should still be granted and was not frivolous, nor processed with any kind of bad faith. Awarding attorney fees was an abuse of discretion.

Reversal, requiring a modification and no attorney fees award is both requested and warranted.

Respectfully submitted this 12th day of August, 2020.



AMY RIMOV, WSBA 30613
Attorney for Appellant

APPENDIX

COPY RECEIVED

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MAXEY LAW OFFICE PLLC

FILED

OCT 0 1 2019

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

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

MARIE MANEAU,

Respondent,

and

MARCUS MANEAU,

Appellant.

No. 36577-8-III

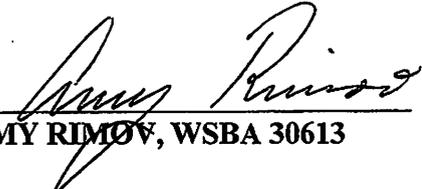
**Motion to Extend
Response Brief Due
Date**

I. MOTION

The Respondent, Marie Maneau, by and through her attorney, Amy Rimov of Amy Rimov JD PS, moves the court for issuance of an order to extend the due date to file Respondent's Brief, which is currently due October 2, 2019, one more month.

Dated: _____

10/1/19


AMY RIMOV, WSBA 30613

II. DECLARATION

COPY

I, Amy Rimov, declare under penalty of perjury under the laws of the State of Washington that the statement contained herein is true and correct to the best of my knowledge.

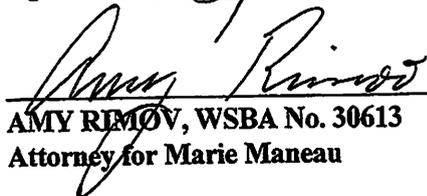
I respectfully request an extension of one more month to file the Respondent's Brief in this matter, making Respondent's brief due November 1, 2019. This is my second request for a continuance on behalf of the Respondent and myself.

This second request for a continuance of the response brief due date is due to a series of personal, business, and family traumas that have occurred since the last extension was granted, that did not allow me sufficient time to complete the brief by tomorrow. My mother passed the Friday before last, on September 20th from ovarian cancer, which required long (Friday – Monday) weekend travel to Port Angeles the past two weekends. My garage was burned and totaled by an arson on September 24th, requiring time away from work for the fire itself, as well as the aftermath of meeting with insurance inspectors, fire inspectors, and contractor inspectors. My legal assistant quit on September 25th leaving me with no knowledgeable help to complete the required tables and finalize the brief.

I believe that life is beginning to return to normal, and I will be able to catch up on all the delayed actions in all of my cases, as well as this brief, within one month.

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

Signed at (city) Spokane (state) WA on (date) 10/1/19.

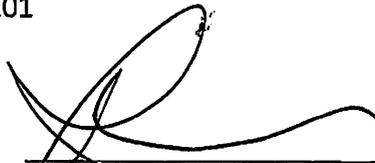

AMY RIMOV, WSBA No. 30613
Attorney for Marie Maneau

PROOF OF SERVICE

The undersigned hereby certifies that she is a person of such age and discretion as to be competent to serve papers.

That on the 1st day of October 2019, she served a copy of this Motion to Extend Response Brief Due Date via hand delivery to the persons hereinafter named at the places of address stated below which are the last known addresses.

Bevan Maxey at: 1835 W. Broadway Ave.,
Spokane, WA 99201



**KENNETH JOHNSON, Legal Assistant to
Attorney Amy Rimov**

RIMOV LAW

August 12, 2020 - 9:20 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 37263-4
Appellate Court Case Title: Verity Battista v. Alex Saha
Superior Court Case Number: 14-3-01799-3

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