101058-3

No. 826808

SUPREME COURT

OF THE STATE OF WASHINGTON

AVI LEANNE TAYLOR,

Petitioner

v.

MIRINA BARBARA JANE STONE

Respondent

MOTION FOR DISCRETIONARY REVIEW

Avi Taylor
Petitioner
PO BOX 1014
Monroe, WA
(206) 715-6161

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A. IDENTITY OF PETITIONER

Petitioner Avi Taylor asks this court to accept review of the Court of Appeals decision designated in Part B of this petition.

B. COURT OF APPEALS DECISION

A copy of the decision denying petitioners Motion to Modify is in Appendix A.

C. ISSUES PRESENTED FOR REVIEW

1. Should discretionary LFOs be imposed upon disabled, indigent individuals who do not have the ability to pay?

2. Should indigency, disability, and homelessness be considered when imposing costs for all Washington State litigants?

3. Should there be an order imposing costs on someone below poverty level whose sole source of income is SSDI?

4. Should disabled, indigent individuals whose sole source of SSDI be given the impossible ultimatum to either pay with their benefits or appear forever, either directly or indirectly?

5. Should only criminals and the mentally disabled be eligible for cost waivers, or do their civil and physically disabled counterparts also deserve debt relief? Should judges have more freedom to act, dispense justice and waive costs once imposed?

6. Should someone be charged for the right to review, but be denied review when based on untenable grounds?

7. Should modern-day Debtors' Prisons be allowed, either directly or indirectly; should we be punishing poverty?

D. STATEMENT OF CASE

Petitioner is a disabled, indigent and homeless Washingtonian. (See Motion to Modify p.2-3, Appendix B) She brought this

matter to the appellate court who denied review, but imposed discretionary costs, without taking into account indigency determinations or ability to pay. (See Commissioner's Ruling Awarding Costs, Appendix C); (See Objections to Cost Bill, Appendix D); (See Indigency Orders, Appendix E); (See Proof of Income, Appendix F). She submitted an Objection to Cost Bill, and later a Motion to Modify and Reply, but the court held that indigency is only applicable to criminals, not their civil counterparts. (See Reply, Appendix G) She begged them to reconsider, showing them where the exhibits in the record on review were, where the NIED claim had been asserted at trial, as was the basis for their decision to award costs, but they still refused review, imposing costs. (See Order Denying Motion to Modify, Appendix A); (See Opinion No. 82680-8-I)

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. The appellate court committed probable error that substantially alters the status quo, departs from the accepted course of proceedings and substantially limits the freedom of parties to act when not considering ability to pay, indigency, disability or homelessness prior to imposing costs.

The U.S. Supreme Court states that "Courts have an affirmative duty to conduct these (ability to pay) inquiries and should do so sua sponte." Or, of their own accord. Importantly, they clarify that courts should inquire into the ability to pay *when imposing LFOs*, rather than waiting until a person fails to pay. This they say, avoids an array of preventable problems. This is applicable to civil matters, and should permeate into these proceedings, as issued by the U.S. Department of Justice Civil Rights Division in their "Dear Colleague" letter. (See "*Dear Colleague"*)

The American Bar Association also recommends that judges consider ability to pay when imposing LFOs, "to prevent the

imposition of crippling fine and fee burdens that (the poor) cannot hope to repay." (See *"It's all about the Money"*)

As they explain, the duty to inquire into ability to pay when setting, imposing, or collecting LFOs is foundational and that "A judge's uncertainty regarding whether inquiry into a litigant's ability to pay in a particular circumstance is necessary under binding precedent should be resolved in favor of making the inquiry. And where a litigant is unrepresented or the matter is civil, doubts about ability to pay ... should generally be resolved ... in the absence of circumstances indicating that the litigant poses a threat to public safety." (See *"Formal Opinion 490"*)

As the Harvard Law Review also recommends: "judges should as a best practice briefly inquire about indigency as a routine aspect of imposing fines . . . this inquiry should take place before costs, penalties, and additional fees accrue and before

the violator reaches the point of nonpayment. (See *"A Fine Scheme"*)

"One of the ways in which the system has not yet achieved the promise of Gideon is in the imposition of fines and fees . . . Courts must be educated on the impact of LFOs and why their blanket imposition is not improving judicial integrity and may, in fact, result in increased disenfranchisement . . . The principle underlying Gideon, and all other due process principles, is that a person . . . will be treated fairly. Imposing fees and fines that a person will never be able to pay does not improve judicial integrity. Instead, it increases the likelihood a person who found themselves in the (justice system) will continue to remain there, unable to discharge the LFOs that were imposed in their case. . . reforming the way that LFOs are imposed in the first place need to be priorities for all" (See "*LFOs : Fulfilling Gideon*")

2. The decision imposing LFOs on an indigent runs contrary to the public policy concerns that prompted the amendment to statutes to limit LFOs imposed on individuals who are indigent.

Conducting an ability to pay analysis prior to imposing costs is an important step, as acknowledged by these courts when they accepted review in Blazina. Similar to in that case, the court had the discretion to order costs, but it was not required to inquire about ability to pay at the time, so they ordered them regardless of indigency. Described as "a watershed moment in Washingtons LFO reform", the Supreme Court stepped in, reversed and remanded, requiring the court to inquire prior to imposing. HB 1783 reflects this reasoning, requiring courts to inquire about indigency prior to imposing discretionary costs, including appellate costs. There, a finding of indigency means that unreachable debts are not imposed. (See *"Debt Bondage"*)

In 2018, our legislature prohibited judges from imposing discretionary fines or fees on defendants if they were indigent,

homeless, or mentally ill. In 2020, Seattle Municipal Court judges moved to discontinue imposing discretionary costs in criminal cases. Yet, in Washington State still today, indigent disabled litigants, who exist well below the poverty level are being subjected to LFOs monumentally disproportionate to their respective incomes, without regard to their lack of ability to generate income; much like in this case. This reality runs contrary to the logic and public policy concerns that prompted these initiatives and respective rulings. The sheer magnitude of research that supported this sweeping LFO reform, all confirming the inequities, impossible situations and injustices created with the imposition of LFOs on Washingtons' indigent, disabled citizens. It leads to many things, not least of which is a "lower life expectancy and a greater chance at illness" (See *"A Fine Scheme"*); (See also *"Are you able-bodied?"*); (See also *"Studying Sanctions"*). Suffice it to say, it impacts these individuals 'outside the present case' and for many, indefinitely.

Who “deserves” debt relief? Is one interesting question raised. Criminals, by the sounds of it, but those they injured? Their civil counterparts? They are left to fend for themselves, without the same consideration and protection that the law should offer in equal doses to all. As noted in the research article, this much needed “sweeping transformation of the system would require action at the Supreme Court or federal level …” if we’re serious about providing for our most impoverished people.

(See *"Studying the System of Monetary Sanctions”*)

As the honorable Judge Theresa Doyle asks in the Washington Supreme Court Minority & Justice Commissions Annual Report, LFO’s: A Ball & Chain: “At what point has the person suffered enough?”, “Are we creating a permanent underclass of the jobless, homeless, and disenfranchised?” For our indigent, disabled, civil citizens, long forgotten about, yes. She says “the inequity created by the imposition of LFOs on the indigent, is obvious . . . as these fees are imposed regardless of income,

allowing wealthier litigants to simply write a check, while the poor drag their debt around like a ball and chain." The sheer inconsistencies and gaps in Washington State's current LFO policy, providing for an ability to pay analysis prior to imposing in criminal but not civil courts, in trial but not appellate courts. We must do better to provide for our population, not a percentage of it. She notes that while there have been some measures in Washington State to provide for more of our people and avoid these preventable proceedings, such as HB 1390 in 2015 that would have provided that nonpayment by an indigent person is presumed to be not willful -many thanks to logic for almost coming to the party- the author died before the senate hearing and there remains a gap, that can be filled, here & now. (See *"LFOs : A Ball and Chain"*)

The imposition of LFOs on indigent Washingtonians is a hot topic and one actively undergoing a metamorphosis in law due to the fact that it is so detrimental, destructive and definitive to

our citizens lives, society and state as a whole, without proper checks and balances in place. LFO debt "disproportionately impacts indigent Washingtonians, subjecting them to a greater possibility of harm … (the study highlights the) need for greater ability to waive or reduce LFOs (and) raises concerns over fairness of LFOs and ability to pay." Which, is notably applicable to all litigants; for criminals are not the only indigent Washingtonians -once they commit the crimes, often times, so then is their victim. (See *"Understanding the Burden of LFOs on Indigent Washingtonians")*

In 2016 these courts were asked "to issue a ruling to set precedent for future cases. The Court agreed to do so." A unanimous decision "held that the imposition of (LFOs) on indigent or disabled defendants violates state and federal law when the trial court makes no particularized finding that the defendant has a current or future ability to pay." Noting that the lower courts had failed to apply the "manifest hardship" rule,

"which prohibits imposing discretionary LFOs in cases where the defendant cannot pay without creating an undue hardship", as her income didn't even cover her basic expenses, and the courts had failed to consider the impact her homelessness and disability would have on her ability to pay, as in this case.

Today, in 2022, these courts are asked to do the same, and issue a ruling to set precedent for future cases. The imposition of LFOs "disproportionately affect disabled people who rely on SSDI. Without the ability to work, their LFOs will likely persist and continue to negatively affect their lives. Individuals with lifelong disabilities that prevent them from working may never be able to pay off their LFOs, resulting in a lifetime of hearings about ability to pay LFOs" As stressed in Catling, "because of his disability, [Catling] abides trapped in an enduring legal process and he suffers other coercive consequences."

“'Nothing in this statute limits the number of times the clerk can summon the debtor to the clerk's office.’ This imposition is particularly burdensome for Catling, who has a debilitating condition that leaves him in chronic pain.” Very much like in this case. “A debt must be capable of being paid, if it is not instead a lifetime of servitude.” This case is not unique, there are many Washingtonians presented with similar sticky situations, that are only made survivable and non-cyclical by these courts; we must do a better job providing for them.

(See *Catling*)

“Washingtonians with disabilities experience disproportionate harm (as they) are not exempted from LFOs … (even) people with (SSDI) have no protection from becoming saddled with debt from LFOs despite their limited income. Recent and current lawsuits against city and county governments in Washington argue that the state’s LFO laws violate federal and state constitutional protections against excessive fines, since

they don't adequately take into account residents' capacity to pay". There is a gap in the law and our people are falling through it; how is it that those with mental disabilities have been provided for, but not those with physical disabilities? If a "person suffers from a mental health condition that prevents (them) from participating in gainful employment—as evidenced by a determination of mental disability based upon enrollment in a public assistance program …the court should not impose additional LFOs." The same should apply to physical disabilities; they too meet the standard for exemption articulated in *Fuller*, that the imposition of LFOs will create a "manifest hardship" (citations in article). Then, the physically disabled are notably mobility impaired, and the courts are commanding them to 'be mobile!', whereas their physically capable, mentally challenged friends, are able to stay home.

The study also notes that on the criminals end, there is no question that the "criminal act and it's consequences "makes a

challenging life even more difficult", in some cases - notably still the opposite here; then you add on costs, and it's even more so. That's only the first domino, though -and one they flicked, notably. The rest of those dominoes, the actual damages that stemmed from their negligent act - someone else has suffered, and is many cases, is still suffering, very much at the expense of their liberties, and livelihood, and any resemblance of life.

They too, are in court, the target of the crime, having already suffered more than the criminal, yet somehow, only the first domino is being provided for - the one they flicked, except, the rest unavoidably and naturally follow, and some of the dominoes from these crimes, are taken care of on the civil side. (See *"LFOs : Fulfilling Gideon"*)

3. The appellate court committed probable error that substantially limits the freedom of a party to act when imposing costs upon a disabled, indigent individual, sentencing her to a

lifetime of hearings, a modern day debtors' prison, thereby punishing and perpetuating her poverty and physical state.

"When courts fail to conduct the applicable legal analysis (assessing indigency) before imposing fines, the imposition of these fines results in "new types of prisons for the poor and poor alone" who find themselves indefinitely tied to the system, "unable to extricate themselves from a system trying to squeeze blood from turnips."

"Judges should as a best practice briefly inquire about indigency as a routine aspect of imposing fines . . . this inquiry should take place before costs, penalties, and additional fees accrue and before the violator reaches the point of nonpayment. While some may argue that this imposes too many additional costs on the court system, I argue that the alternative is even more costly. Under the present system, judges hold a hearing where they impose unpayable fines on indigent violators, then the municipality or a third party harasses (them) for months or

years in an attempt to collect. Some time later, once (little or no payment), a hearing on the issue of nonpayment is held at which point (indigency is inconsistently considered) . . . this protracted system wastes the time and money of both the courts and (indigent litigants) that appear before them, and can easily be avoided by a single question at the moment that the fines are imposed: "Would payment of this fine seriously interfere with or prevent the provision of basic necessities for you or your family?" If the answer is yes, the court can immediately proceed to a Bearden hearing, eliminating every step (and every cost) in between."

"Whether the fine is $10 or $1,000 is immaterial; they cannot pay, and fining them makes them poorer. . . the indigent cannot be deterred from "crimes" that they must commit because of their poverty, particularly the crime of not paying a fine or fee. For those who lack funds, LFOs disrupt (many things). This practice further criminalizes poverty and leaves those with the

fewest resources with the burden of financing the very programs that target and harass them. Those unable to pay fines end up in jail or with continued court supervision, and wind up paying much more than wealthier defendants in the form of warrant, booking, supervision, and monitoring fees, as well as late penalties with high interest. This (results in) a lifetime of spiraling debt that a poor person cannot escape."

(See *"A Fine Scheme"*)

This is why the N.Y.U Law Review recommends that people in poverty be automatically determined as not having the ability to pay - at the time of imposition - thereby saving them the preventable proceedings that ensue, the 'ability to pay' hearings. It is logically then only the people not in poverty, who would attend these hearings. In this case, multiple judges on separate occasions have already made such determinations, and verified that this indigent, disabled individual does not have the ability to pay; do we really need another hearing? x infinity?

(See *"A Debtors' Prison Scheme"*)

(See Appendix E - Indigency Orders)

This is a static state for many, this indigency; they are immobilized in more ways than one. Yet, for disabled indigents, it is this inescapable indigency, that "triggers repeated court appearances, prolonged system involvement" damages physical, mental and emotional health, increases economic and legal strains, and imparts "an overwhelming sense of fear, frustration, anxiety, and despair". (See *"Studying the System of Monetary Sanctions"*) (See also *"Monetary Sanctions as Chronic and Acute Health Stressors"*) Which, for someone who has already been suffering all of the above damages with little or no relief the past six years, the added imposition of costs unreasonably magnifies and perpetuates damages sustained. Washington State Courts could do just about anything to their indigent, disabled citizens, but should they?

There are many ways in which these orders imposing discretionary LFOs lead to the arrest and jailing of indigent, disabled Washingtonians; as this is an all too common outcome, it is well documented by many. While this action is illegal directly, *indirectly* it happens all the time, as one domino falls and naturally hits the next. Often, it is because "Washington trial courts have not been sympathetic … and have been hesitant to find that failure to pay is not willful" they cite one judge who found that "being homeless and unemployed (was) no excuse to not pay"; yet another reasoned that homeless individuals do have the ability to pay because they could get off their feet and go work, "beg for money on freeway exits, and pick up aluminum cans". (See "*LFOs: Fulfilling Gideon"*) (See *"Are you able-bodied?"*) (See *"The Debtors' Prison Scheme"*)

There is no crystal ball needed to foresee that those with mobility issues would then have difficulty mobilizing, yet too often when this materialized, and there was a respective failure

to appear (FTA), bench warrants were issued and these indigent, disabled individuals were arrested and served time, which turned their initial fine, into a foreordained crime. When mobility issues are then inevitably raised, "Although the judge claimed she understood that the distance made appearing difficult, there had been a history of failing to appear. She ultimately quashed the warrant but emphasized this was the last time she would take this lenient action. Therefore, even though the courts appear to account for disability when imposing LFOs and determining willful noncompliance for failure to pay, individuals with disabilities are still subject to surveillance by the courts that can land them in jail anyway."

(See *"Are you able-bodied?"*)

"The government should not be allowed to do indirectly what it cannot do directly" and that's exactly what's happening here. Indigent, disabled Washingtonians are being jailed by the courts for having LFOs imposed on them that they cannot pay; it is a

'Modern Day Debtors' Prison, all too similar to the ones in Benton County that were just outlawed.

(See *U.S. v. Smith*)

4. The appellate court committed probable error that substantially alters the status quo and limits the freedom of a party to act when imposing discretionary costs upon a disabled, indigent whole sole source of income is SSDI

The purpose of the anti-attachment clause of the social security "statute is to protect a minimum standard of living by safeguarding Social Security benefits from paying other debt". These benefits help "mitigate the effects of poverty" yet the legal system seems to counter by ensuring "these social and economic inequalities by assessing LFOs on those who are economically fragile and receiving public assistance as their primary source of income." (See *Sec. 207. [42 U.S.C. 407] (a)*)

(See "*Robbing Peter to Pay Paul"*)

"When an order imposes an LFO on a person who has only SSDI, that order is unlawful." (See *Wakefield*)

"I see no distinction between imposing such an LFO in a judgment and sentence and directing payment by separate order"; "The majority ignores the reality that an imposition of LFOs *is* an order to pay LFOs." (See *Catling*)

It is only by flicking the first domino that the rest follow. It is not separate, they cannot happen exclusively. It is attached, way more than it is not. When their only income is SSDI, an order imposing LFOs, is an order saying use your income to pay this; use, your only income, which we know is SSDI, to pay this, *or else* - Pay or Appear, forever and ever and ever and ever.

That is punishing them for not using SSDI to pay their LFOs. Pay with your SSDI benefits (ie. Your only money) or appear forever - which will be more than a little difficult since you're

indigent and disabled. That is punishing them for their poverty, and orders imposing costs that cannot be paid, do indirectly ask SSDI recipients to use their benefits if they ever want to leave the system. It's the only way, to leave the system. Or else.

"When a state court order attaches to Social Security benefits in contravention of 42 U.S.C. § 407(a), the attachment amounts to a conflict with federal law, and such a conflict is one "that the State cannot win." (See *Bennett v. Arkansas*). In conjunction with the federal guidance that "the government should not be allowed to do indirectly what it cannot do directly" we come too close to crossing these bounds, and for what purpose, when we could just steer clear? (See *U.S. v. Smith*)

5. The appellate court committed probable error that substantially limits the freedom of parties to act when little can be done about LFOs once imposed.

Courts “criminalize poverty” by “burying people unable to pay under ever-growing mountains of debt”, and by punishing the poor for failure to pay, via a lifetime of court appearances and surveillance. As experts at the American Bar Association explain, when there is no ability to pay, there is no way to get out from under LFOs, which leaves the person bound to the system, forced into more serious debt, and suffering further from the collateral consequences of that debt. They cite Washington State as the key example for states that offer no relief once the LFO is imposed; once it’s entered, the only relief is making a payment, they explain; it’s "almost impossible to undo”.

They note “the negative consequences that stem from the imposition of LFOs in Washington … especially problematic for (indigents)” and how these can be avoided entirely simply by assessing ability to pay at the time of imposition. “When it comes to LFOs, we do not seem to have an appreciation for the

serious impact that poverty has on a person and his or her ability to meet an LFO. '$500 or $600 for someone who has no ability to pay may as well be $1 million." Multiply that by the various convictions (in this case, severe and disfiguring injuries) that some people have and you are left with people who, no matter what their intentions or how hard they try to rectify the situation, are sentenced to harsher punishments and an even more devastating poverty from which they can never emerge." They found that in Washington, courts were "creating long-term debt, substantial in relation to expected earnings; this generated further disadvantages . . . which then brought "more emotional strain and delegitimizing of the justice system." Illinois is the state to watch, and one is truly providing for their population, as a whole, as evidenced in the fact that they mirror LFO waiver provisions from civil to criminal to traffic, etc; leaving no stone unturned, and no citizen, not provided for.

(See *"It's all about the Money"*) In Ohio, a court may not order a person to appear for unpaid costs. But then, Black's Law

Dictionary defines an "indigent" litigant as "[s]omeone who is too poor to hire a lawyer," and who is "eligible to receive aid from a court-appointed attorney and a *waiver of court costs*." (See *"The Costs of Justice"*)

"Once imposed, LFOs are hard to avoid, as there are limited ways for the court to modify the amount a person owes, even when that person is unable to pay for reasons beyond their control." The study confirms that in Washington, "ability to seek relief from LFOs because of the inability to pay has been extremely limited by the courts." They then cite to Division One of our Court of Appeals for having divergent practices from the other divisions, specifically when denying modification requests. (See *"LFOs : Fulfilling Gideon"*)

"Even when it was clear to judges that payment would never be collected from individuals with disabilities, we saw no clear mechanism available for them to wipe away these debts.

Instead, individuals would be summoned, judges would find their lack of payment non-willful, and a new review hearing would be set at a future date. The result was a repeating cycle of administrative review hearings that kept individuals "tethered" to the criminal justice system (See "*Studying the System"*) and offered no clear resolution to the conflict between owing LFOs and disability. (See *"Are you able-bodied?"*)

It is only at the time of imposition that anything can truly be done; otherwise the hands of the judge and the litigants, are inextricably tied; neither party is able to act, their freedom to act is not limited, it is stagnated. Frozen in time, forever.

6. *The appellate court committed obvious errors that substantially limits the freedom of a party to act, renders further proceedings useless, substantially alters status quo, departs from accepted course of proceedings and sanctions such a departure.*

"A court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds." (See *State v. Taylor*); A decision is manifestly unreasonable or based on untenable grounds "if it rests on facts unsupported in the record." (See *State v. Rohrich*); "Findings of fact must be made on evidence," the court wrote. "And in this case, there was no evidence in the record to support the judge's findings." (See *Wakefield*)

"The requirement that an "obvious error . . . would render further proceedings useless" sensibly refers to rulings that misapply clearly established law to undisputed facts or that misunderstand facts in a manner rising to the level of reversible error." (See "*The Confusing Standards for Discretionary Review in Washington*")

As the U.S. Supreme Court states, "judges must ensure that the law is followed and preserve "both the appearance and reality

of fairness, generating the feeling, so important to a popular government, that justice has been done." They add, "to ensure that every part of our justice system provides equal justice and due process". (See "*Dear Colleague"*)

Unfortunately, much like in *Palmer*, the appellate court failed to undertake an independent review of the record, which respectively meant the law and facts were not applied or verified. Instead, boilerplate pro se language was relied upon, and the courts decided she must not have included any exhibits in the ROR and surely, couldn't have asserted an NIED claim at trial. As neither of the above sentiments is true, their decision to deny review and due process rests on a false foundation, and gives neither the appearance or reality of fairness. The petitioners only 'crime' was daring to bring errors to the appellate courts for review, and it is being treated as such, only corroborated with the decision to award costs on these grounds.

As this Supreme Court recognized in *State v. ANJ*, "the right to review (is) fundamental to, and implicit in, any meaningful modern concept of ordered liberty. In Washington however, the article specifies, "this right comes at a price", especially for indigents, which is unfair. Here, petitioner is being charged for the right, while being denied it at the same time. It is fundamentally unfair to ignore the vertical stare decisis of mandatory law, but then elect to impose a discretionary one, let alone upon the injured party. The appellate courts' decision here renders further proceedings useless on a mini, micro and macro level; with this case first, then neither the judge nor litigant can do anything about the LFOs once imposed, then further, it says that decisions and verdicts can be based on untenable grounds, which will leave much of Washington State weary. Which is why we must "continue to challenge the failure of courts to make (indigency analysis) until it is addressed by the Supreme Court" So here I am, asking for many.

(See *"LFOs : Fulfilling Gideon"*)

F. CONCLUSION

This Court should accept review for the reasons indicated in Part E and waive costs congruous with the logic behind the metamorphosis in current LFO reform and pursuant to RAP 1.2(c), RAP 13.5 and all other authority to set precedent that Washington State protects and provides for it's all of it's indigent, disabled population.

Respectfully submitted on this 29th day of August, 2022 by:

Avi Taylor, Petitioner

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AVI TAYLOR - FILING PRO SE

August 29, 2022 - 4:54 PM

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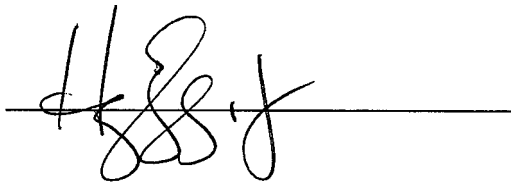
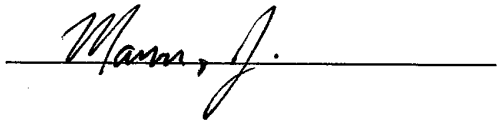
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

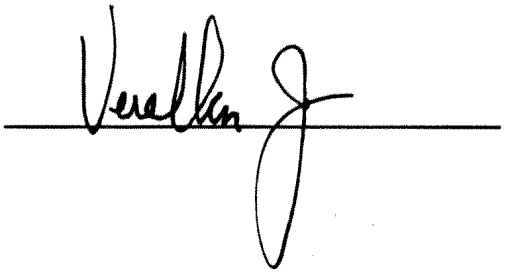
AVI LEANNE TAYLOR, Appellant,	)	82680-8-I
v.	)	ORDER DENYING MOTION TO MODIFY
MIRINA STONE, Respondent.	)	

Appellant Avi Taylor has filed a motion to modify the commissioner's May 23, 2022 ruling awarding costs to respondent Mirina Stone. Stone has filed a response, and Taylor has filed a reply. We have considered the motion under RAP 17.7 and have determined that the motion should be denied. Now, therefore, it is hereby

ORDERED that the motion to modify is DENIED.







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Appellate Court Case Title:	Avi Leanne Taylor v. Mirina Stone

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COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

AVI LEANNE TAYLOR, Appellant, vs. MIRINA STONE, Respondent	No. 19-2-05264-3 SEA No. 826808 APPELLANT'S MOTION TO MODIFY COMMISIONER'S RULING ON COSTS

1. IDENTITY OF MOVING PARTY

Avi Taylor, appellant, asks for the relief designated in Part 2.

2. STATEMENT OF RELIEF SOUGHT

Modify the ruling of the commissioner filed on May 23rd, 2022. The ruling imposed costs on Taylor. This court should

grant this motion to modify and exercise their discretion to waive appellate costs.

3. FACTS RELEVANT TO MOTION

a) Taylor is indigent.

Taylor lacks the current or likely future ability to pay, as she was disfigured and disabled by the injuries sustained in this collision, which left her unable to pursue per many prior vocations.

(See Objections to Cost Bill, p.6, Appendix G)

(See Proof of Income, Appendix E)

(See Indigency Orders, Appendix F)

(See Appellant's Opening Brief: Disability, Disfigurement, Lost Income)

b) Taylor is homeless.

Taylor is now homeless for the first time in her life, in temporary housing, and in need of permanent housing; she had

been able to afford houses in Seattle prior to these injuries for 15 years, in comparison.

(RP p.87-88, 216-219)

d) Taylor needs surgery.

Taylor is in need of surgery, to offset the damage done to her spine and vertebrae in this collision; it's gotten to the point where there are no other options, it will worsen until then, and even then . . .

(See Objections to Cost Bill, p.12-13)

(See AOB, p.5-11, p.38)

e) Taylor's past medical bills of $20,000.

There is a deficit after the nearly $20K in past medical bills from Dr. Gallegos, in addition to the other medical tools, treatment and equipment received during, since and needed, not included in that.

(See Objections to Cost Bill, p.11)

(See Medical Bills, Appendix A)

f) Taylor is drowning in damages from this collision.

The trial courts compensated Taylor for past pain and suffering only. The award for lost earnings alone, pursuant to Washington State law, is considerably higher than the award for past pain and suffering. Taylor still suffers the disabling disfigurement & damages, daily.

(See Objections to Cost Bill, p.9-10)

(See AOB, Lost Earnings p. 5-26)

(See ARB, p.12)

(See Pain Logs, Appendix C)

g) This case has not yet been reviewed.

Washington State law was not applied in the trial courts and Taylor has a right to review of the trial courts decision by these courts.

Instead, the law was ignored here, as it was there, and these courts declined to acknowledge the majority of law in Appellant's Briefs. The correct standard of review was not

employed. When the appellant apologized for not making the exhibits in the record on review more apparent for these courts, and showed them where they were, these courts still asserted there were none. Equally, when Taylor showed that she had actually asserted the NIED claim at trial, these courts persisted in perpetuating that she never did. The law and the evidence should be paramount in proceedings, the errors in law are cause for remand, and had appellant's errors actually been reviewed, Stone would not have 'prevailed' on appeal. It is premature to declare prior to review.

(See Motion for Reconsideration, p.1-34)

(See Opinion for #826808)

h) These courts possess the power to waive these costs.

In the interest of justice, these courts should elect to use the discretion bestowed in RAP 1.2(c) and decline to impose a manifest hardship and costs upon someone who is living considerably below the poverty line, because of the injuries sustained in this collision, and not order her to pay her attacker,

avoiding an even greater substantial injustice than is currently materializing.

(See Objections to Cost Bill, RAP 1.2(c))

4. GROUNDS FOR RELIEF AND ARGUMENT

Standard of Review

We review a motion to modify a commissioner's ruling de novo. *State v. Vasquez, 95 Wn. App. 12, 15, 972 P.2d 109 (1998).*

Motions to Modify receive de novo review by a three-judge panel. *State v. Rolax, 104 Wn.2d 129, 133 (1985).*

Argument

RAP 1.2(c) holds the power for these courts to waive these costs, reading in part "The appellate court may waive or alter the provisions of any of these rules in order to serve the ends of justice"

1. There has been no fair and full review on the merits.

Appellant has a right to obtain review of the trial court decision, and that has not yet happened in this case. It is premature and improper to declare a prevailing party prior to an actual review.

Our constitutional due process "requires that 'deprivations of life, liberty, or property be substantively reasonable' or 'supported by some legitimate justification.'" *Nielsen, 177 Wn. App. at 53 (quoting Russell W. Galloway, Jr., Basic Substantive Due Process Analysis, 26 U.S.F. L. REV. 625, 625-26 (1992)) U.S. CONST. amends. V, XIV, § 1; WASH. CONST. art. I, § 3.*

In this case, the imposition of costs rests on untenable grounds; to take away someone's right to review because they must not have x, y or z, without checking to see if they x, y'd or z'd, is substantially unreasonable. It is fundamentally unfair to impose costs, yet let the legal and evidentiary errors of the trial court stand without a care.

To proceed without consideration of, or in disregard of the facts or law, is by definition, arbitrary and capricious action. To then impose costs or punish someone else for this action, or inaction, is unjust.

In this case, none of the facts have been verified to see if they're actually in the record and true - and the majority of our Washington State law has gone ignored - in this court of review. It's disheartening, to say the very least. It is why we were here.

The lack of review resting in part on the false foundation that there are no exhibits in the record on review, which is incorrect; and also on the idea that no NIED claim was asserted at trial; except, again, there is not an ounce of truth in these statements.

These courts should have checked to see if the above was even true, prior to relying on any boilerplates as a basis to preclude review.

Furthermore, the Fourteenth Amendment requires that the state appellate system be "free of unreasoned distinctions". Once a state provides a right to an appeal, due process and equal protection prohibit it from creating arbitrary or unreasoned distinctions. The imposition of costs is based on untenable grounds as stated above and illustrated in Appellant's Motion for Reconsideration and Briefs. Had there been a much anticipated fair and full review on the merits in this case, had the correct standard of review been employed, had the legal and evidentiary errors actually been reviewed with the powers of impartiality these courts solely possess - Stone would not have been the prevailing party. It is improper to award costs at this juncture.

(See also Appellant's Motion for Reconsideration, Appendix H)

2. Indigency & ability to pay

These courts also contend that ability to pay is only a factor in criminal matters; that costs are only waived for criminals who can't pay, but victims of crimes must pay, regardless of the same lack of ability to pay. These courts then imposed costs, without analyzing Taylor's lack of ability to pay those legal financial obligations.

That's like saying, because she hasn't committed crime, has to pay. It's a distinction that should not be dispositive. "the civil-criminal distinction is not dispositive, and a state may not deny an indigent litigant… by styling a proceeding as 'civil'" U.S. Supreme Court's holding in *Turner v. Rogers (cited in State v. Leon, 2013 R.I. Super. LEXIS 45 (R.I. Super. 2013)*

While it is true that the rules in general seem to cater to criminals with regards to costs, it would be equitable if these courts could provide for the victims, as well as they have the

criminals; at present, only the ones who have committed crimes are being taken care of. That is unreasonable, unbalanced, unjust and does not provide for the law abiding citizens of Washington State and King County.

Someone's ability to pay should factor in, regardless of if they're the one who committed or suffered the crime; the same logic should apply to civil matters. If anything, victims of crimes should be afforded greater care, than the criminals themselves - not less.

Does it seem fair that courts would waive fees only for criminals but not for the only ones suffering the damages from those crimes? No.

If it matters whether the criminal can pay or not, of course it matters whether a victim of a crime can pay, or not. The sentiment expressed by our Supreme Court in *Blazina* that "if one meets the GR 34 standards for indigency, courts should seriously question that persons ability to pay LFO's." (*Blazina,*

182 Wn.2d at 839) rings equally true for civil litigants, whom are equally limited in that regard.

At the beginning of this matter, these courts exercised their discretionary powers and declined to impose fees, presumably largely because of Taylor's indigent status, and lack of ability to pay. Later, Taylor was again found to be indigent while in these courts.

As Taylor is still indigent, and still lacks the current or likely future ability to pay, these courts should exercise their inherent powers again and following the same logic, decline to impose costs.

There is no evidence to suggest that Taylor has the ability to pay; quite to the contrary, she is already in the negative after past medical bills and needed care, tools & equipment, and does not even have enough for permanent housing, for the first time in her life, let alone needed future medical, as a sole result of Stone's negligence.

To impose costs upon what she has already suffered and will suffer for many years to come, because of Stone, would be fundamentally unfair.

Which would only necessitate further proceedings since, spoiler alert, no, she does not have the current or likely future ability to pay. There are two roads to take, in theory, one results in a manifest hardship to the appellant, who would undoubtedly then suffer more - and why, for what purpose, and to what end. On the other road, these courts harness their inherent power found in RAP 1.2(c) and elsewhere, and steer this ship towards justice, once and for all. In a perfect world, we don't just wave (waive costs) as we pass by, we stop and review, too; it was the whole reason for getting on the boat. . . 'Justice, up ahead!' The sign said. Steer us back, appellant begged.

(See also Appellant's Objections to Cost Bill p.2-15)

(See Appendix E, Proof of Income; Appendix F, Indigency Orders)

3. The costs are well above market rates and otherwise unreasonable.

The standard cost for basic transcribing with an average of one person speaking at a time, is $1.50 per minute, not $4.00 per minute. Even if there had been 5 people talking at once, which was never the case, those rates don't exceed $2.50 per hour. In this case, the standard of $1.50 would apply, if anything. Nearly as egregious is the number of hours she is claiming she worked on this - she says she spent 633 hours, transcribing only 20-25 hours. Which, is above and beyond ridiculous. Trial only lasted 4.5 days. Yet somehow she spent over 26 days, around the clock, 24 hours each day, on this and only this. In comparison, appellant also did, the exact same thing, and transcribed the record. They did about the same amount of work, with the extra non-relevant bits their transcriptionist added in, and the missing opening and closing statements appellant contributed. While it

took appellant considerable amount of time to do, this is because she has to take frequent breaks due to pain in her hands, wrists and pain and difficulty sitting due to near constant bone displacement, pain breathing due to bones pushing into her lungs, e t c. Were it not for being stopped by the injuries sustained in this collision, if it was before this collision, it would have been just over the actual number of hours at trial. Logistically. Seven times that is dishonest.

https://www.transcriptionoutsourcing.net/legal-transcription-prices/

Conclusion

These courts possess the power to waive costs as found in RAP 1.2(c) and beyond, and the honorable justices of these courts should elect to use those discretionary powers to modify the commissioners ruling and decline to award costs in the interest of justice.

This document contains 2,133 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 22nd of June, 2022, by,

Avi Taylor

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AVI TAYLOR - FILING PRO SE

August 29, 2022 - 4:57 PM

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

AVI LEANNE TAYLOR, Appellant, v. MIRINA STONE, Respondent.	)	No. 82680-8-I COMMISSIONER'S RULING AWARDING COSTS

This personal injury case arises from a two-car collision. On May 2, 2022, this Court issued an unpublished opinion affirming the trial court's award of $35,000 for noneconomic damages only to appellant (plaintiff) Avi Taylor. Respondent (defendant) Mirina Stone filed a cost bill, requesting an award of costs totaling $2,732 ($200 statutory attorney fee and $2,532 for preparing the report of proceedings). Taylor filed an objection, arguing that this Court should not award any cost against her because she has been found indigent.

A commissioner of this Court "will award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its decision terminating review." RAP 14.2 (emphasis added). Stone substantially prevailed on review, and this Court did not preclude a cost award in its opinion terminating review. The only exception to this rule concerns an "adult offender" when a commissioner "determines *an adult offender* does not have the current or likely future ability to pay such costs." RAP 14.2 (emphasis added). The exception does not apply to Taylor, who is a civil litigant, not an adult offender.

Taylor's reliance on State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015), and other criminal cases is misplaced. Blazina addressed a sentencing court's statutorily required inquiry under RCW 10.01.160 into a defendant's current and future ability to pay before imposing discretionary legal financial obligations. Blazina did not address appellate costs under RAP 14.2. The above discussed exception to RAP 14.2 was adopted after Blazina and explicitly applies to "an adult offender," not a civil litigant. Under RAP 14.2, I have no discretion to deny a cost award for Stone based on Taylor's indigency.

Taylor does not argue that the costs set forth in Stone's cost bill are not recoverable under RAP 14.3(a). The statutory attorney fee and the costs for preparing the report of proceedings set forth in the cost bill are allowed under the rule. The requested costs totaling of $2,732 are thus awarded to Stone.

Therefore, it is

ORDERED that costs in the amount of $2,732 are awarded to respondent Mirina Stone. Appellant Avi Taylor is liable for this award and shall pay this amount.

Masako Hayashi, Commissioner

AVI TAYLOR - FILING PRO SE

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COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

AVI LEANNE TAYLOR, Appellant, vs. MIRINA STONE, Respondent	No. 19-2-05264-3 SEA No. 826808 APPELLANT'S OBJECTIONS TO COST BILL

Miss Taylor, Appellant, objects to any [award of attorneys fees and preparation] costs to Miss Stone, Respondent, because:

Taylor is indigent and was found to be indigent in two separate determinations by two separate judges both prior to and following trial; she respectively does not have the current or likely future ability to pay; such costs would impose a manifest hardship; and, they are otherwise unreasonable and unjustified.

As RAP 14.2 reads, in part: A commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review unless the commissioner or clerk determines the party does not have the current or likely future ability to pay such costs. The commissioner or clerk may consider any evidence offered to determine the individual's current or future ability to pay.

ABILITY TO PAY AND INDIGENCY

Ability to pay is an important consideration in the discretionary imposition of appellate costs. Sinclair , 192 Wash.App. at 389, 367 P.3d 612. In the context of legal financial obligations (LFOs), our Supreme Court has recognized that if one meets the GR 34 standards for indigency, courts should seriously question that person's ability to pay LFOs. Blazina , 182 Wash.2d at 835, 839, 344 P.3d 680.

In this case, Taylor meets the GR 34 standards for indigency, and respectively was found to be indigent in two separate determinations, both prior to and following trial.

An Order to Proceed In Forma Pauperis was issued on February 22nd, 2019 reading in part:

"the moving party is indigent"

"receives benefits from needs/means based assistance programs"

"has household income at or below 125% of federal poverty level"

"all fees…the payment of which is a condition precedent to the moving parts ability to secure access to judicial relief are waived"

Two and a half years later, on October 19th, 2021 an Order of Indigency was issued, reading in part:

"the moving party is indigent because she has a household income at or below the 125% of the federal poverty guideline"

"the moving party is unable to pay for the expenses of appellate review based on her indigency"

Of course, in her Motion for Indigency, as Taylor attested:

"I have been left physically disabled by the injuries sustained in this collision which has left me unable to pursue my vocations/work"

Let's take a look at the injuries sustained, where she is now, and vocations to better decipher her current and future ability to pay.

A DAY IN THE LIFE OF

As the record shows, Miss Taylor was working full time prior to this collision and managing a team of four employees. In addition to this, she also hosted several annual events and offered energy medicine sessions. She had been in the medical industry for 10 years prior to transitioning to the recreational side.

In her free time, she went hiking, biking, running, dancing, adventuring, travelling, did yoga and gardened.

Taylor had also afforded her own home in Seattle for over 20 years prior to this collision, first living in Ballard then West Seattle. With an average home expense of $1,500 monthly, she had more than that coming in for 20 years, from her businesses.

Then, she was T-boned in this collision.

INJURIES SUSTAINED IN THIS COLLISION

WORSENED BOTH CURVES IN SPINE
to 51* and 54* in lumbar and thoracic spines
new "SEVERE" classification that requires surgery
new vertabral rotary component in each area of spine
right angle is now "sharp and well visualized"
new degenerative disc thinning
new retrolithesis (disc slippage)
moved upper right rib into shoulder

Objective Medical Findings
Collision 2/23/16
CP's 86-92

cervical range of motion
extension - zero; could not look up
flexion, from 50 to 15 degrees, could barely look down
left, from 45 to 15 degrees, could barely look left
right, from 45 to 15 degrees, could barely look right

head region
L occiput inferior

cervical region
c2 new severe hypermobility
c3 deviated to the right with moderate hypermobility
c4 deviated to the right with new retrolithesis
c5 new retrolithesis
*and reversal of curve at c4, c5
c6 deviated to the left
WITH significant loss of cervical lordosis (curve of neck)
ie. this impact straightened the curve of Taylor's neck

ribcage region
sternum - inferior
first rib prominent (dislocated into) supraclavicular fossa
L4-6th CC prominent and inferior
R 10th CC inferior posterior

thoracic region
T1 deviated to the left
T3 deviated to the right
T5 deviated to the left
T8 deviated to the right
T12 deviated to the left

lumbar region
L1 posterior to left
L2 posterior to left
L4 posterior to right

pelvic region
pelvis - left anterior superior (and to the front)
iliac spine - medially rotated
pubic bone - deviates to the right

sacral region
coccyx / tailbone - deviated to the right
sacrum,
R lower SI joint fixated (stuck)
R upper SI joint fixated (stuck)
left upper SI joint fixated (stuck)

upper extremeties
right acromion anterior
left acromion inferior
right ulna superior at radial ulnar joint

lower extremeties
right trochanter lateral
right patella lateral

(naturopathic codes)
sprains of cervical, thoracic, lumbar spines & ribs
strains at neck, thorax, lower back
misalignments in head, cervical, thoracic, lumbar,
sacral, pelvic regions, rib cage, upper & lower extremeties

The below image is how this impact moved Taylors spine

the image in no way incorporates all injuries noted in records

The blue line : spine she was hiking, running, working FT with.

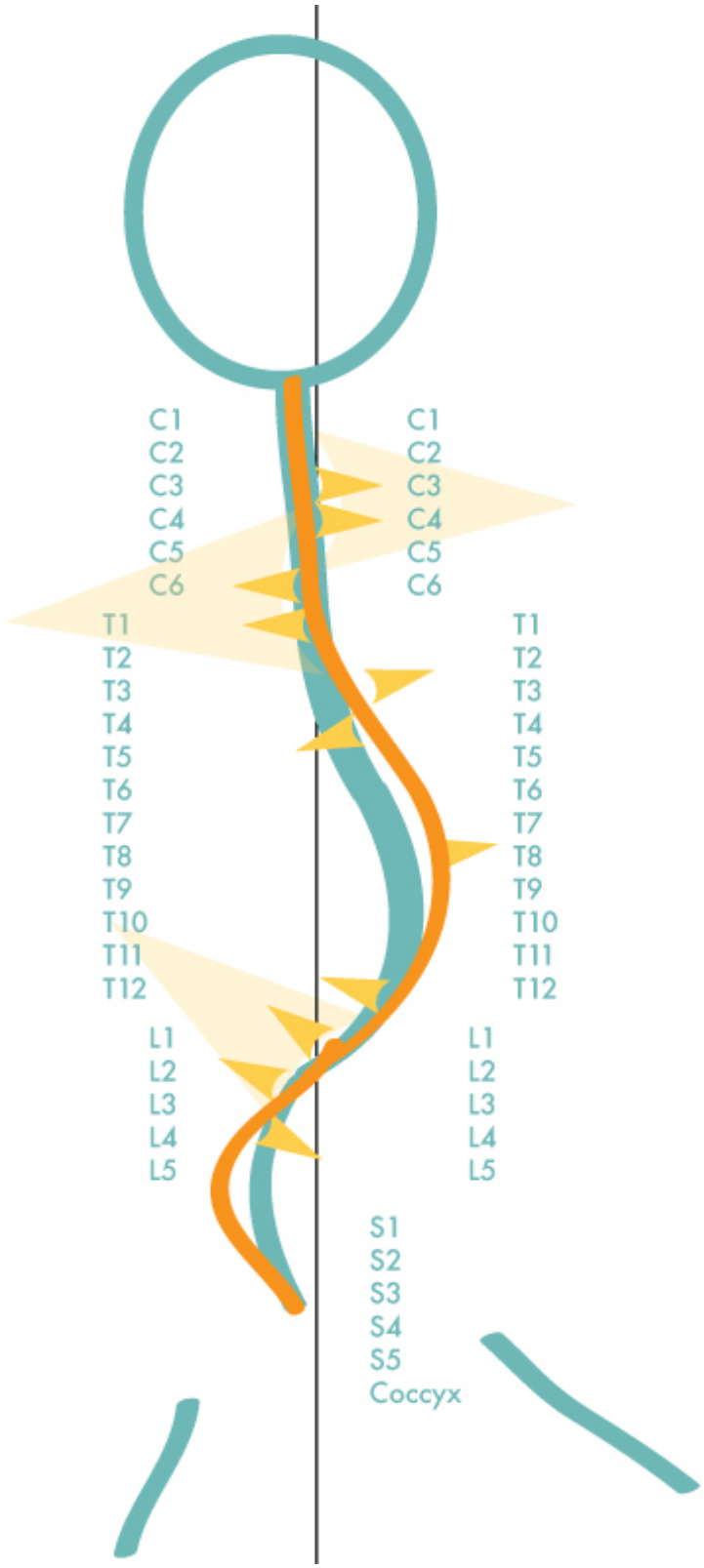
The orange line : where her spine moved in this collision.

The orange arrows : which direction the vertebrae were moved.

The result is difficulty standing, walking, sitting, breathing, etc.

Visual result is a hunched back, crooked, unable to straighten

Daily result is pain management / relocating dislocating bones.


C1
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C5
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C4
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S5
Coccyx

The above notably is only of cervical, thoracic & lumbar movement and does not account for retrolithesis, sacral spine, head, or other injuries sustained, like those to hands and wrists. Medical records are inherently messy, but they're all there. (See Appendix B : Objective Medical Findings)

Taylor is still suffering from the injuries sustained in this collision. As her doctor testified, she has seriously exacerbated in the past several years and is need of MRI's and more.

Witnesses testified that it seemed like she was getting worse, more crooked, that she was visibly handicapped, and always in pain. That she now needs help at home with basic household tasks and now has pain and difficulty standing, walking, using her hands/wrists, lifting any weight, caring for her animals, etc.

She went from hiking and running mountains to struggling to stand up and walk a few feet and needing to lean on a cart to get around the grocery store; from being able to work full time and

then some, to having to close all the doors to her many businesses for lack of physical ability to continue. Her new full time job is healing from these injuries in the hopes of one day regaining some resemblance of her life. This collision has left Taylor disabled, disfigured, indigent and homeless though. Suffice it to say, her life is much different today.

(See Appendix C : Pain Logs and Diaries)

The following Day in the Life Of Videos better illustrate what medical and lay witnesses have already testified to; Taylor is still suffering, has worsened and is far from pre-accident status.

These have all been taken since trial ended.

(See Appendix D : Day in the Life Of Videos)

MONEY & THE FUTURE

Appellant receives $1,013 per month to live on from disability. This is just over $12K per year, well below the poverty level.

(See Appendix E : Proof of Income and Food Stamps)

She has been living on the above monthly income, since this collision. This means that in trial court, she had to choose between food & fees. She exhausted her savings surviving following this collision, on rent, massage, food, etc. She has not been able to afford a home, for the first time in her life. She has not been able to resume any of her pre-accident activities.

The trial court damage award for past pain and suffering, only.

Trial Court Award $35K

MINUS

Past Medical $19,728

(See Appendix A : Medical Bills from this Collision)

MINUS

Car

Inversion Table

Pain Relief

Massages

Grocery

MINUS

Back specialist appts

More massage appts

Permanent housing needed

Medical tools & equipment needed

Surgery needed for new "severe" curves in back

"curves greater than 50 degrees can get worse over time, by about 1 to 1 1/2 degrees per year"
Scoliosis Research Society
https://www.srs.org/patients-and-families/common-questions-and-glossary/frequently-asked-questions/treatment-and-coping

- **50- to 69-degree curve.** For curves measuring 50 degrees or more, surgery is likely to be recommended…considerations include the degree of pain, ability to handle daily tasks and enjoy everyday activities, preferences about physical appearance.
- **70-degree curve or more.** greater risk for the spine's curve and rotation to cause the rib cage to eventually twist so much that heart and lung function can be significantly affected.

https://www.spine-health.com/conditions/scoliosis/cobb-angle-measurement-and-treatment-guidelines

If there's any wonder why it's been getting worse, not better.

Taylor has had pain breathing and in her lungs since this collision, with ribs dislocating into them, impinging her breath. With her level of functionality already so diminished, and so much difficulty standing and walking, surgery is inevitable.

Taylor is in touch with a back specialist but is still finding it difficult to make and keep appointments, due to this intractable pain. More tools & equipment are needed, as is care & surgery.

Cost: $ more than income/balance

$Deficit$

Trickle down effect

Starts with injuries

Goes to disability

& not being able to work

Which leads to indigency

And inevitably, homelessness

This is how people become homeless, due to no fault of their own.

As has happened in this case, for the first time in Taylor's life.

She does not have the current or likely future ability to pay.

She is still suffering from the injuries sustained in this collision.

She works on this case - to recover - in all of her moving time.

Any imposition of costs would impose a manifest hardship on Miss Taylor, who is an 1. Indigent party, 2. Who is disabled, 3. Unable to work at any of her many businesses despite strong desire and demand, 4. In need of tools and equipment so she can get to a place physically where she can regularly make and keep appointments again, 5. Homeless and in need of a home, 6. Has

substantial past medical bills 7. Will incur many more to recover 8. Is living considerably below the poverty line

Our Supreme Court acknowledged the difficult issues surrounding the assignment of costs to indigent parties. Blazina

Similarly in Grant, Washington Appellate Courts decided that the imposition of appellate costs to an indigent party would threaten those same evils and elected to exercise their discretion, declining to impose costs.

(State v Grant No. 46734-8-II)

Likewise in Perez, there were indigency findings. These courts decided an award for appellate costs would be inappropriate.

State v. Perez, No. 73105-0-I, (Wash. Ct. App. Mar. 21, 2016)

Finally, respondent has lied to both the trial and appellate courts about material matters and planted evidence in each. Giving

respondent an award following this conduct, would only reward, not punish that behavior, and inspire future misconduct.

(See Appellants Reply Brief)

Conclusion

Consistent with the holdings in Blazina, Sinclair, Grant and Perez, these courts should exercise the discretion that RCW 10.73 and RAP 14.2 provide, and decline to impose appellate costs upon an indigent party who does not have the ability to pay them and whose imposition upon which would impose a manifest hardship.

Respectfully submitted this 20th of May, 2022, by,

Avi Taylor

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I declare under penalty of perjury that the foregoing is true and correct. This document contains 1,623 words, excluding the parts of the document exempted from the word count by RAP 18.17.

In compliance with RAP 14.5 RAP FORM 11. Objections to Cost Bill

AVI TAYLOR - FILING PRO SE

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Appendix C

FILED
2019 FEB 22
KING COUNTY
SUPERIOR COURT CLERK

CASE #: 19-2-05264-3 SEA

EXP01

SUPERIOR Court of Washington
For KING COUNTY

19-2-05264-3SEA

AVI LEANNE TAYLOR
Petitioner/Plaintiff,

vs.

CAMERON STEWART STONE
Respondent/Defendant.

No. _____

Order Re Waiver of Civil Fees and Surcharges

☒ **Granted (ORPRFP)**
☐ **Denied (ORDYMT)**
☐ **Clerk's Action Required 3.1**

I. Basis

The court received the motion to waive fees and surcharges filed by or on behalf of the ☑ petitioner/plaintiff ☐ respondent/defendant.

II. Findings

The Court reviewed the motion and supporting declaration(s). Based on the declaration(s) and any relevant records and files, the Court finds:

2.1 ☑ The moving party is indigent based on the following: He or she:

oops!

☐ is represented by a qualified legal aid provider that screened and found the applicant eligible for free civil legal aid services; and/or

☑ receives benefits from one or more needs-based, means-tested assistance programs; and/or

☑ has household income at or below 125% of the federal poverty guideline; and/or

☐ has household income above 125% of the federal poverty guideline but cannot meet basic household living expenses and pay the fees and/or surcharges; and/or

☐ other: _____

2.2 ☐ The moving party is not indigent.

2.3 ☐ Other: _____

_____

_____

_____

_____

_____.

III. Order

Based on the findings the court orders:

3.1 ☒ The motion is granted, and

☒ all fees and surcharges the payment of which is a condition precedent to the moving party's ability to secure access to judicial relief are waived.

☐ other: _____

_____

_____

_____

_____

_____.

3.2 ☐ The motion is denied.

Dated: 2/22/19

Judge/Commissioner

HENRY H. JUDSON

FEB 22 2019

COURT COMMISSIONER

Presented by:

X _____

Signature of Party or Lawyer/WSBA No.

X Avi TAYLOR X 2/22/19

Print or Type Name Date

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

Avi Leanne Taylor Plaintiff/Petitioner vs. Mirina Stone, Defendant/Respondent	Case No. 19-2-05264-3 SEA FINDING OF INDIGENCY AND ORDER DIRECTING THE CLERK OF COURT TO TRANSMIT MOTION AND ALL PAPERS SUPPORTING IT TO SUPREME COURT UNDER RAP 15.2(C) **Clerk's Action Required**

I. BASIS

THIS MATTER came before the court on Plaintiff's Motion for order to Show Cause re: Vacation of Order on Indigency and Motion to Vacate Order on Indigency. The court the following:

1) Plaintiff's Motion for Order to Show Cause Re: Vacation of Order on Indigency (Dkt #156);
2) Declaration of Avi Taylor in Support of Plaintiff's Motion for Order to Show Cause re: Vacation of Order of Indigency, and exhibits A-E attached thereto (Dkt #157);
3) Defendant Stone's Response to Plaintiff's Motion to Vacate Indigency Order (Dkt #160).

Judge Regina S. Cahan
King County Superior Court
516 Third Ave
Seattle, WA 98104

Plaintiff had filed a Motion for Order of Indigency which the Court Denied without Prejudice on June 10, 2021 because there was insufficient documentation for the court to forward the necessary documentation to the Supreme Court pursuant to RAP 15.2(c). Although the plaintiff titles her motion as a Motion to Vacate Order on Indigency, it is clear she is asking for the court to make a finding of indigency and transfer the matter to the Supreme court for assessment pursuant to RAP 15.2(c).

II. FINDINGS

Having reviewed the additional files and records herein, and pursuant to RAP 15(c)(2), the court makes the following findings:

1. The moving party is indigent because she has a household income at or below the 125% of the federal poverty guideline.
2. The moving party is unable to pay for the expenses of appellate review based on her indigency.

III. ORDER

Based on the findings, the Clerk of the Court is directed to transmit to the Supreme Court, without charge to the moving party, this finding of indigency, the affidavit in support of the motion and all other papers submitted in support of the motion.

DATED this 19th day of October, 2021.

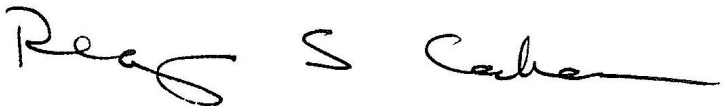
Electronic Signature Attached

Judge Regina S. Cahan
Chief Civil Judge

Judge Regina S. Cahan
King County Superior Court
516 Third Ave
Seattle, WA 98104

King County Superior Court
Judicial Electronic Signature Page

Case Number:	19-2-05264-3
Case Title:	TAYLOR vs STONE
Document Title:	ORDER RE FINDING OF INDIGENCY AND TRANSFER T
Signed By:	Regina Cahan
Date:	October 19, 2021



Judge: Regina Cahan

This document is signed in accordance with the provisions in GR 30.

Certificate Hash:	AB8C2D4446EBEB4BB439ECF0CC0EE090B63DC727
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Certificate expiry date:	7/16/2023 1:46:58 PM
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LEA ENNIS,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750

June 16, 2021

Mark Matthew Miller
Law Offices of Mark M. Miller
15500 SE 30th Pl Ste 201
Bellevue, WA 98007-6347
mark.miller@farmersinsurance.com

Avi Taylor
PO Box 1014
Monroe, WA 98272
ombience.om@gmail.com

CASE #: 82680-8-I
Avi Taylor, Appellant v. Mirina Stone, Respondent

Counsel:

The following notation ruling by Commissioner Jennifer Koh of the Court was entered on June 16, 2021:

Based on the trial court's order of indigency, the filing fee is hereby waived.

Sincerely,

Lea Ennis
Court Administrator/Clerk

HCL

AVI TAYLOR - FILING PRO SE

August 29, 2022 - 5:02 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	101,058-3
Appellate Court Case Title:	Avi Leanne Taylor v. Mirina Stone

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Address:
PO BOX 1014
Monroe, WA, 98272
Phone: (206) 715-6161

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Appendix E

TACOMA WA 98411-6699

Washington State Department of Social & Health Services

11/27/21

AVI L TAYLOR
PO BOX 1014
MONROE WA 98272-4014

Phone #
TTY/TDD # 800-209-5446
Toll Free # 877-501-2233

Client ID # 004221365

0133102 002630 001 - 5

Dear AVI L TAYLOR

Your benefit will change beginning 01/01/22.

	From	To
Basic Food Assistance (federal)	$161.00	$134.00

03/23/21 AVI L TAYLOR IO:000931 Seq: 00003213 Page: 11 of 13

Medical Programs

AU # 018975251

Household size for this program 1

Income We Count

	03/2021	04/2021
AVI L TAYLOR *Social Security Benefits*	$1013.00	$1013.00
	03/2021	**04/2021**
Total Gross Income	$1013.00	$1013.00

MONEY & THE FUTURE

Appellant receives $1,013 per month to live on from disability. This is just over $12K per year, well below the poverty level.

(See Appendix E : Proof of Income and Food Stamps)

She has been living on the above monthly income, since this collision. This means that in trial court, she had to choose between food & fees. She exhausted her savings surviving following this collision, on rent, massage, food, etc. She has not been able to afford a home, for the first time in her life. She has not been able to resume any of her pre-accident activities.

The trial court damage award for past pain and suffering, only.

Trial Court Award $35K

MINUS

Past Medical $19,728

(See Appendix A : Medical Bills from this Collision)

AVI TAYLOR - FILING PRO SE

August 29, 2022 - 5:07 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	101,058-3
Appellate Court Case Title:	Avi Leanne Taylor v. Mirina Stone

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Address:
PO BOX 1014
Monroe, WA, 98272
Phone: (206) 715-6161

Note: The Filing Id is 20220829170640SC562546

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

AVI LEANNE TAYLOR, Appellant, vs. MIRINA STONE, Respondent	No. 19-2-05264-3 SEA No. 826808 APPELLANT'S REPLY TO RESPONDENTS RESPONSE TO APPELLANTS MOTION TO MODIFY COMMISSIONERS RULING ON COSTS

In Appellant's Objection to Costs and Motion to Modify, she argued imposing costs would be improper, unreasonable, unjust and otherwise illegal when a) disabled b) physically unable to work c) indigent d) lacks current or likely future ability to pay e) only income is from SSDI f) well below poverty level g) homeless and in need of permanent housing h) hurt and in need of medical care, equipment, surgery i) past medical of nearly $20K k) trial

court award for past pain and suffering only leaves her with remaining damages l) costs would award willful & repeated negligence m) Stone billing nearly double standard market rates, n) premature to award prior to review.

(Appendix G - Objections to Cost Bill,

Appendix I - Motion to Modify)

IT IS ILLEGAL TO IMPOSE COSTS UPON TAYLOR WHOSE SOLE SOURCE OF INCOME IS HER SOCIAL SECURITY DISABILITY INCOME (SSDI)

> The Washington State Supreme Court has ruled that the court cannot expect LFO payments from individuals whose sole income is derived from social security disability benefits in accordance with Social Security Act's anti-attachment statute, 42U.S.C. § 407(a)
>
> *State of Washington v. Catling (2019) No. 95794-1*
>
> When an order imposes an LFO on a person who has only SSDI, that order is unlawful.

Wakefield, 186 Wash.2d at 609, 380 P.3d 459.

In this case, Taylors only source of income since the injuries sustained in this collision 6 years ago, has been her SSDI.

(Appendix G - Objections to Cost Bill p.11,

Appendix E - Proof of Income)

Respectively, any order imposing costs upon Taylor is unlawful.

"A DEBT MUST BE CAPABLE OF BEING PAID"

Since LFOs indirectly require engagement in the labor force, and disabled, indigent individuals are physically unable to participate in it, impossible situations are created with the imposition of LFOs on these individuals. Studies have shown that in Washington, they're still required to regularly come to court to prove they are still disabled, indigent, and unable to pay. Which is "difficult for individuals with disabilities who were balancing the demands of their medical care with other obligations or experienced mobility issues making it hard to

physically get to court. Missing court would often result in a warrant, subsequent arrest, and short stints in jail. Being arrested was not only stressful for these individuals, but also had the potential to exacerbate underlying health conditions. Thus, the bureaucratic process of mandatory review hearings and the lack of legal mechanisms to waive all debts for those who would never be able to pay due to disability placed these individuals in stressful and potentially dangerous circumstances." We can look at Taylor's pain logs and diaries to glean how impossible an imposition this would be.

(Appendix C - Pain Logs)

Made to suffer endlessly for the crimes and negligence of others, they end up tethered to the system, stuck and stagnated; for the study notes that even when it became clear to judges that this money could never be collected from these indigent, disabled individuals, once they were imposed, there was no clear mechanism available to them to mitigate the conflict already created with an impossible situation.

https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8059708/

This results in an "endless cycle" for many Washington state citizens, who cannot pay then get their licenses taken away, then can't make it to work, then cannot pay even more than before, and so on. In this case of course, Taylor is still healing from the injuries sustained in this collision, and has not had any income in six years. She has already had her 'ability to get to work' taken away, by Stone. She should not now have her ability to get to doctors and treatment visits threatened to be taken away by these courts, who by imposing LFOs that she cannot pay, could be inadvertently taking away her license, which would cripple her ability to heal from these injuries.

This is likely why our "courts are mandated to consider present and future ability to pay when assessing LFOs" and in 2018, legislature was passed barring the imposition of any non-mandatory LFOs on indigents, indicative of the 'growing concern over the disproportionate burden (LFOs) place on the poor'. The end result for civil litigants is not distinctive, but the same domino effect.

State v. Blazina, 182 Wn.2d at 839,

State v. Ramirez, No. 95249–3

https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8059706/

Our courts held that unless there is a proper inquiry into the present and future ability to pay, as well as the impact the proposed payment would have on the payee, any decision to impose LFOs is based on untenable grounds. The matter was remanded to the trial courts to ascertain ability to pay by Division Two of these courts. (https://casetext.com/case/state-v-keen-29). In this case however, Taylor has already been found to be indigent by the trial courts, both prior to and following trial; she does not have the ability to pay.

(Appendix E - Income, Appendix F - Indigency Orders)

Respondent points to the partial compensation received in trial court without also acknowledging the nearly $20,000 in past medical from Dr. Gallegos for the 63 treatment visits received, the lost earnings that she was not reimbursed for, the fact that she is now homeless and in need of permanent housing, that she was still having really high levels of pain as they ended treatment and were no longer seeing noticeable improvement,

how her doctor testified that she needs an MRI and more, having "seriously exacerbated" since then, the fact that she now needs surgery to keep her now severe spine and structure from getting worse and more hunchbacked and even that isn't a guarantee.

(Appendix A - Medical Bills, Appendix I - Motion to Modify p.3)

The money received in trial court does not even pay for all of the aforementioned - housing, MRI's, surgery, everything else needed now and into the future, it barely puts a dent in the damages deficit. The inequity created by throwing less than a years worth of income at someone who has sustained over 6 years in damages and lost life and livelihood and will continue to, is insurmountable and unsustainable.

The logic expressed by the courts in *Jafar* applies here too, and appellant fails to understand how as a practical matter, she could pay the costs now, or ever. There is no record supporting the reasoning that Taylor could afford to pay any amount based on her financial situation. There is next to nothing left per month with substantially more needed. Imposing costs would be improper and impractical.

Stone of course disagrees, and argues that these courts should ignore the fact that Taylor has been left indigent and disabled by the injuries sustained in this collision and does not have the current or likely future ability to pay; arguing that those facts should only factor into criminal matters. Damages have a domino effect though, as they have here, and the indigency that followed the injuries sustained is more relevant than not, as is her complete lack of ability to pay.

> “"[A] debt must be capable of being paid, if it is not instead a lifetime [yoke] of servitude." *Loretta E. Lynch, U.S. Attorney General, State v. Catling, 193 Wash. 2d 252, 269-70 (Wash. 2019)*

In this case, Taylors ability to pay at some unknown time in the future, is totally dependent on her ability to heal from the injuries sustained in this collision, which is solely dependent on these courts dispensing justice. So, is it likely, or unlikely? It depends on these courts exercising the powers vested in RAP 1.2(c) and elsewhere to review and remand. These courts possess the power to steer this entire ship towards justice, not just wave

(waive costs) as we pass by. Stone seems to agree, as he hasn't argued that these courts don't have that power, nor that they should elect not to review.

(Appendix B - Injuries, Appendix I - Motion to Modify p.13)

IMPOSING COSTS IS PREMATURE PRIOR TO REVIEW

The review naturally impacts who the prevailing party will be. To deny review, then declare that the prevailing party is whoever did not bring the errors to these courts for review, is markedly different than prevailing on the issues. Imposing costs on whoever dared to bring errors to these courts for review, without actually reviewing the issues and respective errors to determine a victor, is improper.

Respondent doesn't disagree with this point, that it's unreasonable to impose costs prior to an actual review. He doesn't argue that imposing costs would be proper prior to review. He doesn't even argue that this case was ever reviewed by these courts, only stating that the verdict was affirmed in all respects. Stone's main argument in fact is that these courts

affirmed the trial courts ruling in all respects, so he should be awarded all costs.

Except, to affirm something, without looking, is arbitrary. To say anything like 'she must have got it wrong - she's a pro se - we'll just say she didn't do all these things - no need to check to see if it's actually true' in the same breath as 'the trial courts must have got it right, we'll just say they did without actually checking the evidence or applying the law of our great state of Washington'. Is being pro se enough to justify prejudice?

'it must be right' 'she must have got it wrong' 'no need to look'

vs.

'we reviewed the errors, facts, law, and ROR and affirmed'

There's an important and distinctive difference.

This case wasn't reviewed in most respects, so logistically, cannot be affirmed in all respects. Had it been reviewed, it could not have been affirmed; Stone would not have prematurely been declared the prevailing party, and would not be potentially being paid for acts of repeated and willful negligence. Taylor should

not be punished for the negligence of another, at all [too late for that] but here, it can be avoided.

These courts have a duty to see that justice is done. RAP 1.2(c) vests these courts with the power to ensure that justice comes into play - it is these courts that get the final say, and declining to impose costs in this case get's closest to justice at the end of the day.

GETTING PAID TO PERVERT THE COURSE OF JUSTICE

Stone then declares that she deserves to be compensated for her time and expenses in these courts - for the time she spent blatantly lying to these courts, planting evidence in these courts, and more.

They have knowingly made false statements under penalty of perjury, and respectively, should be penalized, for their willful and repeated acts of premeditated perjury. Stone's acts of negligence should not be rewarded, and that is precisely what they seek to accomplish here. Like in their Reply Brief, when they fabricated 'evidence' in an attempt to 'show' that appellant

had misrepresented the truth in some way - except, they literally 'had' to make something up, since there was nothing to actually point to in reality. Stone commits crime after crime after crime and who pays? Taylor. She is already paying for Stone's continued crimes, she should not also have to pay costs.

These courts should not condone Stone's conduct by awarding costs. If their time in these courts should be considered at all, it is in the form of a CR 11 sanction, designed to dissuade such crimes against justice, which they also did not object to.

(Objections to Cost Bill p.15-16, Reply Brief p. 6-8, 22)

THE PROXIMATE CAUSE OF PROCEEDINGS

Stone then points to when they convinced these courts to let them prepare their own report of proceedings, so they could better point to things outside the bounds of the law, and distract these courts from the actual law and evidence within it. These inclusions were very much motivated by their own prerogative and outside the bounds of what the appellant was required to include in the NRP.

She didn't include anything about lost profits! Stone cried.

That's not an issue on review, Taylor replied.

Well, I want to make lost income about lost profits, said Stone. That's against the law! Taylor sighed.

Everything relevant to the issues on review, and the law and evidence surrounding and within was already included in the narrative report. They didn't 'have' to prepare one.

She didn't include Stone's testimony!

Well, liability and proximate cause aren't issues on appeal.

We're trying to say she didn't feel it as much as you did though! Mm, so the one throwing the punches didn't feel it as much as the one being punched? That's crazy! Great argument. That'll be the day when damages are measured by the damage

done ‘to’ the one doing the damage, and not the injured party, who actually sustained the damages.

Taylor was on the receiving end of the force generated by Stone. It’s physics, but it’s not relevant to the issues on review.

Importantly, even with Stone’s inclusions, many of the facts found by the trial courts are nowhere to be found in the record.

‘Taylor said this’ no, she didn’t.

‘so and so said this’ no, they didn’t.

‘this happened’ no; where is this coming from.

Which is why we were here, in these courts. To review the evidentiary and legal errors that have cumulatively led to an improper reduction of damages big enough to require remand.

(See Opening Brief - Appendix J, Reconsideration - Appendix H)

HOW TO PROFIT FROM PROCEEDINGS

Then, Stone’s attempts to profit from the damage they’ve caused and continue to cause should be denied. They have made

no attempt to show their requested rates are reasonable or standard; in response to the much lower market rates in Taylor's Motion to Modify, they proclaim it's standard, but offer no proof at all. It should be easy to show if it was so standard - the appellant was easily able to find proof that it was not, and include that in her motion, yet they have none.

They've devoted most of this section of their brief to focus on the fact that appellant said 'hour' instead of 'page', instead of actually responding to the numbers, so here is more proof that they're trying to profit from their continued willful and repeated negligence:

> $2.50 per page in Seattle
>
> https://www.aquoco.co/

In *State ex. rel. Slagle v. Rogers*, the state court held . . . must pay the court reporter $2.50 per page for a transcript.

The $4 they're seeking, is nearly double standard.

CONCLUSION

Pursuant to RAP 1.2(c), 42U.S.C. § 407(a) and for the foregoing reasons, these courts should GRANT appellant's Motion to Modify, WAIVE costs and ideally also REVIEW, please and thank you. Many thanks for your time and consideration.

Respectfully submitted on Friday, July 15th, 2022, by:

Avi Taylor

Avi Taylor
Appellant
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This document contains 2,495 words, excluding the parts of the document exempted from the word count by RAP 18.17.

I hereby certify under penalty of perjury that the foregoing is true and correct.

AVI TAYLOR - FILING PRO SE

August 29, 2022 - 5:08 PM

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Appellate Court Case Number:	101,058-3
Appellate Court Case Title:	Avi Leanne Taylor v. Mirina Stone

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