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STATE OF WASHINGTON

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

WASHINGTON STATE DEPARTMENT OF
SOCIAL AND HEALTH SERVICES,

Appellant,

v.

JAMES HAMILTON,

Respondent.

APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

The sole issue before the Court is whether the Department of Social and Health Services, Division of Child Support (DCS) should be required to pay James Hamilton's attorney fees arising from a child support dispute.

The underlying dispute started when Hamilton's teenage daughter B.H. ran away and began living with relatives. B.H. was supported by public assistance during this time and did not move back to her father's home for 4 ½ months. Hamilton was the legal custodian and knew where his daughter was living. He consented to B.H.'s living arrangement because he wanted B.H. to return voluntarily.

B.H.'s mother was required to pay child support to Hamilton under a prior court order. After B.H. left Hamilton's home, DCS kept the mother's support payments instead of distributing them to Hamilton, pursuant to RCW 26.23.035. This statute authorizes DCS to disburse child support to a caregiver other than the legal custodian, if the legal custodian consents to the living arrangement. Because B.H.'s relatives assigned B.H.'s right to support to the State when B.H. received public assistance, DCS retained the child support payments. *See* RCW 74.20.330; RCW 74.20A.030. Meanwhile, DCS had taken steps to establish Hamilton's child support obligation administratively. However,

the administrative proceedings ultimately were dismissed after repeated continuances to allow Hamilton to have his child support obligation decided in court instead.

The superior court ordered DCS to hand the child support it kept over to Hamilton because he was the legal custodian of B.H. The court ordered DCS to pay Hamilton \$12,000 in attorney fees under RCW 26.26.140. The court found that DCS's opposition to Hamilton's petitions and motions was frivolous under RCW 4.84.185 and that Hamilton had prevailed in a judicial review of agency action under RCW 4.84.350, even though the administrative action was dismissed before reaching the merits and no judicial review ever took place under the Administrative Procedure Act (APA).

DCS seeks to overturn the award of attorney fees in its entirety. The superior court acted outside its authority in awarding attorney fees. DCS's opposition to Hamilton's petition and motions was not frivolous, and none of the statutes cited authorize an award of attorney fees against DCS in this action.

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II. ASSIGNMENT OF ERROR

The superior court erred by entering the January 27, 2012, "Order Awarding Attorney Fees & Judgment,"¹ in which it awarded \$12,000 in attorney fees against DCS because it concluded: (a) fees were authorized under RCW 26.26.140; (b) DCS's response to Hamilton's child support modification action was frivolous and advanced without reasonable cause under RCW 4.84.185; and (c) Hamilton prevailed against DCS in a judicial review of agency action under RCW 4.84.350.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Issue 1: Did the superior court err by awarding attorney fees under RCW 26.26.140, which applies only to parentage actions under RCW 26.26, when Hamilton filed a child support modification action under RCW 26.09?

RCW 26.23.035 permits the Division of Child Support to distribute child support it collects to someone other than the legal custodian if the legal custodian consents to the living arrangement. Through the principle of subrogation, RCW 74.20A.030 transfers the child's right to child support to the State when the State is supporting the child through public assistance.

¹ Attached as Appendix 1.

Issue 2: Under those statutes, was it frivolous for DCS to argue that it was entitled to retain child support paid by B.H.'s mother that was owed for time periods B.H. was supported by public assistance, and living with relatives, when Hamilton knew where B.H. was living, and repeatedly told state workers she could remain there?

DCS took action to assess Hamilton's child support obligation administratively. RCW 74.20A.055 authorizes DCS to establish support administratively when there is no court order setting a responsible parent's support obligation or relieving the parent from paying support. Because Hamilton preferred to proceed judicially, the administrative process was continued repeatedly to provide him that opportunity. The administrative hearing was dismissed after a superior court order was entered, without ever reaching the merits.

Issue 3: Under those facts, is Hamilton entitled to fees under RCW 4.84.350, which authorizes awards in judicial reviews of agency action, when he bypassed the administrative process by going directly to superior court, and no administrative record was ever filed or reviewed?

Issue 4: Even if Hamilton's complaint in superior court could be construed as a petition for judicial review of administrative action, did the superior court have subject matter jurisdiction to award fees when

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Hamilton failed to invoke the appellate jurisdiction of the superior court by serving DSHS and the Shoots?

Issue 5: Even if Hamilton had satisfied the statutory requirements necessary to provide the court with subject matter jurisdiction over administrative actions by DSHS, were DCS's administrative actions to assess support substantially justified under RCW 74.20.055 when there was no court order setting Hamilton's support obligation or relieving him of this responsibility?

Issue 6: Even if attorney fees could be awarded under RCW 4.84.350, did the superior court err by failing to limit the award only to amounts incurred in judicial review of administrative action?

Issue 7: Even if attorney fees could be awarded under RCW 4.84.150 or RCW 4.84.350, did the court calculate them correctly when it (1) counted the same hours twice; (2) included hours for litigation that did not involve DCS; and (3) failed to limit the fees to those authorized by statute?

IV. STATEMENT OF THE CASE

A. Statutory Background

Whenever the Division of Child Support (DCS) receives an application for public assistance, or a request for child support enforcement services, it is required to take action to establish and enforce

parental support obligations. RCW 74.20.040. A parent's obligation to support his or her child is a basic tenet of society, and it is the parent's obligation that is primary rather than the taxpayers of this state. RCW 74.20A.010; *Lizotte v. Lizotte*, 15 Wn. App. 622, 626, 551 P.2d 137 (1976).

In the absence of a controlling superior court order, DCS has the authority to set child support obligations using an administrative process. RCW 74.20A.055. Administrative Law Judges (ALJ) are required to follow the same Washington State Child Support Schedule as superior court judges. RCW 26.19.035 (1).

This administrative process supplements the judicial one. *See DSHS v. Handy*, 62 Wn. App. 105, 813 P.2d 610 (1991). The Legislature created the administrative process because existing remedies had not "proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency." RCW 74.20A.010. Specifically, the Legislature expressed concern about the workload of courts, prosecuting attorneys, and the attorney general, and wanted to provide a mechanism to make parental resources more immediately available to meet the needs of minor children. *Id.*

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DCS's power to administratively establish child support is "liberally construed" so that "persons legally responsible for the care and support of children within the state [are] required to assume their legal obligations in order to reduce the financial cost to the State of Washington" RCW 74.20.010. Fostering the administrative establishment of child support ensures that parents are required to meet the financial needs of their children and taxpayer resources are conserved. *Id.*

DCS is authorized to administratively establish the child support obligation of a parent when "there is no [court] order that establishes the responsible parent's support obligation or specifically relieves the responsible parent of a support obligation" RCW 74.20A.055(1).

A caregiver's failure to obtain legal custody does not insulate a parent from being required to pay child support. *Powers v. State Dep't of Social and Health Servs.*, 32 Wn. App. 310, 316, 648 P.2d 439 (1982) (mother's failure to obtain legal custody did not absolve father from his financial obligation or deprive DSHS of jurisdiction to set support). *See also Brown v. DSHS*, 136 Wn. App. 895, 896, 151 P.3d 235 (2007) (DCS has authority to set the mother's child support obligation administratively after son moved in with his father, even though court orders awarded custody to the mother and required the father to pay support).

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B. Factual Background

In 1996, when B.H. was 3, a parentage order established James Hamilton as her father. CP at 5-7. A court awarded custody of B.H. to her mother, Michelle Baldwin, and Hamilton was required to pay child support. CP at 5. In 2007, when B.H. was 14, Hamilton became the primary residential parent and Baldwin was ordered to pay child support. CP at 9-15.

On July 5, 2010, a few months shy of B.H.'s 17th birthday, she ran away from Hamilton's home following a physical altercation with her stepmother. CP at 182, 236. B.H. claimed that her stepmother punched her, threw her to the ground, and pulled her hair after discovering that B.H.'s boyfriend had spent the night.² CP at 236, 238-39. B.H. fled to the home of her boyfriend's mother for two to three days and then moved to a homeless shelter for several weeks. CP at 236.

On July 26, 2010, B.H.'s aunt, Karen Shoot³, agreed to pick up B.H. from the homeless shelter. CP at 236. Shoot notified Child Protective Services (CPS) the next day about B.H.'s allegation of physical abuse and that B.H. was now staying with her and her husband. CP at 236, 238. B.H. told CPS that she did not want to return home. CP at 239.

² A Child Protective Services worker confirmed there had been a physical altercation but concluded it did not rise to the level of physical abuse. CP at 240, 243.

³ Karen Shoot is married to the brother of B.H.'s stepfather. CP at 243.

CPS contacted Hamilton on August 4, 2010, and he gave permission for B.H. to stay in the Shoot home. CP at 236. CPS case notes show that when CPS contacted Hamilton again on August 10, 2010, Hamilton reaffirmed that B.H. could stay with the Shoots, although he preferred her to come home of her own volition. CP at 240. He also refused to provide any financial assistance to the Shoots, and said that he believed the Shoots would soon tire of B.H. and send her home. *Id.* Hamilton advised the CPS case worker that B.H. was covered by her biological mother's medical insurance and that the Shoots could obtain B.H.'s medical information from her. *Id.*

On August 12, 2010, the Shoots applied to DCS for non-assistance support enforcement services. CP at 251. As part of the application, Ms. Shoot declared that she did not wrongfully deprive Hamilton of physical custody of B.H. CP at 251, 254. She also stated that Hamilton gave her verbal permission to have physical custody of B.H. CP at 236. The Shoots provided additional documentation supporting their claim that B.H. was living with them and that Hamilton consented. CP at 233, 236-47. On August 13, 2010, the DCS support enforcement officer received a call from CPS verifying that B.H. was living with the Shoots. CP at 132. On August 25, 2010, the Shoots started receiving public assistance for B.H. CP at 251.

On September 2, 2010, a CPS worker again contacted Hamilton. Hamilton reported that when he last spoke with B.H. she screamed and cursed at him. CP at 241. Hamilton stated that he no longer wanted B.H. to come home. *Id.* The CPS worker informed Hamilton that the Shoots had shown an interest in pursuing third-party custody of B.H., to which Hamilton stated he would not sign legal custody over to anyone. *Id.* CPS offered Hamilton additional services related to B.H., which he declined. *Id.* The caseworker then closed the case because no family members were requesting reconciliation or other services. *Id.* Meanwhile, the Shoots enrolled B.H. in a nearby high school. CP at 243.

On September 6, 2010, after being served with child support paperwork, Hamilton reported B.H. as a missing person to the Pacific County Sheriff—even though he knew that she was living with the Shoots. CP at 138, 243. He told a CPS caseworker a few days later that B.H. could remain with the Shoots, but he was not going to pay any child support or sign any documents to make her life easy. CP at 243. The CPS caseworker concluded that B.H. did not want to return home and that Hamilton did not want to force her to do so. *Id.*

On September 23, 2010, DCS formally served Hamilton with notice that it would enforce his child support obligation established in the 1996 parentage order. CP at 135. Hamilton responded by claiming that

B.H. had lived with him in August and that he should not owe child support for that month. CP at 233. Hamilton's attorney subsequently asserted that the 1996 parentage order was unenforceable because it had been superseded by the 2007 order, which gave Hamilton legal custody and ended his support obligation. CP at 135.⁴ DCS agreed that the 1996 order was unenforceable. CP at 135, 233. DCS commenced efforts to establish Hamilton's support obligation administratively under RCW 74.20A.055 because the 2007 court order only addressed Baldwin's support obligation; it did not set Hamilton's obligation or expressly relieve him from paying support. CP at 9-15, 142-51.⁵

DCS had already been enforcing Baldwin's court-ordered child support obligation while B.H. was living with Hamilton and continued to do so. CP at 34-36. Because public assistance was now being expended for B.H.'s support, DCS stopped distributing these payments to Hamilton and kept them as reimbursement for its public assistance expenditures, as authorized in RCW 26.23.035. CP at 33.

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⁴ Hamilton had not mentioned the 2007 order when responding to DCS. CP at 233.

⁵ DCS is authorized to set support administratively under RCW 74.20A.055(1) "if there is no order that establishes the responsible parent's child support obligation or specifically relieves the responsible parent of a support obligation...."

On November 18, 2010, Hamilton was personally served with notice that DCS planned to set his child support obligation administratively, as authorized in RCW 74.20A.055. CP at 142. He requested an administrative hearing to contest the notice. CP at 152. He later claimed in superior court that he had wrongfully been deprived of custody, which is an affirmative defense to being assessed a child support obligation under RCW 74.20.065; *see also* WAC 388-14A-3370(3). CP at 171-72.

On November 19, 2010, the Shoots filed a petition for third party custody in Snohomish County under RCW 26.10.⁶ That court dismissed the petition on December 20, 2010. Meanwhile, on November 22, 2010, Hamilton filed a Youth at Risk Petition⁷ in Pacific County under Cause No. 10-7-00059-3. CP at 118, 155-58. On December 9, 2010, the Pacific County Superior Court ordered B.H. to return to Hamilton's home after she completed the current semester at the high school in which she had enrolled. CP at 155-58. She has lived with Hamilton since December 18, 2010. CP at 90.

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⁶ *See* case summary report for Snohomish County Superior Court Cause No. 10-3-02953-4, available at <http://dw.courts.wa.gov/>.

⁷ *See* RCW 13.32A.

The Office of Administrative Hearings (OAH) originally scheduled an administrative hearing to set Hamilton's child support obligation for January 18, 2011. CP at 233. But OAH repeatedly continued the hearing at Hamilton's request because Hamilton wanted to have his child support obligation resolved judicially rather than administratively. CP at 184, 214, 233.

On January 20, 2011, Hamilton filed a petition in Pacific County Superior Court to modify the 2007 support order setting Baldwin's support obligation. CP at 1. Hamilton sought to increase Baldwin's monthly obligation and require her to pay post-secondary child support. CP at 1- 3. Because Hamilton had resumed physical custody of B.H. and was **not** receiving public assistance, the State had no subrogated right to child support. Thus, DCS did not participate in litigation related to the modification petition. DCS's interest in the action was restricted to Hamilton's ancillary claim that he was entitled to child support previously paid by Baldwin for time periods B.H. was living with the Shoots and supported by public assistance. CP at 3. Hamilton's petition did not ask the court to relieve him from owing child support during the time B.H. was living with the Shoots and receiving public assistance. CP at 1-3.

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On March 8, 2011, the superior court entered an order temporarily increasing Baldwin's child support obligation to \$764 per month beginning February 2011, and requiring both parents to pay for post-secondary support in an amount to be determined later. CP at 59, 61.

On July 20, 2011, Hamilton filed a motion for post-secondary education, medical reimbursement, attorney fees, and child support DCS had collected from Baldwin while B.H. was living with the Shoots and receiving public assistance. CP at 66-67. On August 19, 2011, the superior court approved Hamilton's and Baldwin's proposed order setting Baldwin's post-secondary support obligation at \$450 per month beginning September 2011. CP at 95-96; RP (August 19, 2011) at 2.

That same day, Hamilton and DCS presented arguments on Hamilton's motion requesting that DCS pay him the child support it had collected from Baldwin and kept as reimbursement for its public assistance expenditures, as authorized in RCW 26.23.035. CP at 67, 90; RP (August 19, 2011) at 2-30. Hamilton claimed that he was entitled to \$1,692 in child support because he was the legal custodian and the Shoots had engaged in custodial interference. CP at 90; RP (August 19, 2011)

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at 5.⁸ Although DCS submitted no written opposition to the motion, DCS argued at the hearing there was no custodial interference, and that the State was entitled to keep Baldwin's support payments because B.H. was not living with Hamilton or being supported by him at that time. RP (August 19, 2011) at 10. The superior court ruled that Hamilton was entitled to child support from Baldwin because there was no court order allowing B.H. to live with the Shoots. RP (August 19, 2011) at 24. The superior court declined to hear testimony from a CPS caseworker that Hamilton consented to B.H. living with the Shoots, because it deemed this information irrelevant. RP (August 19, 2011) at 19-21.

Hamilton also requested \$2,500 in attorney fees to cover his efforts to contest the administrative enforcement action and recover child support DCS collected from Baldwin. RP (August 19, 2011) at 25; CP at 90; CP at 89-90. Hamilton did not cite any legal authority in support of the request. CP at 66-67, 89-90. The superior court granted Hamilton's attorney fees request, but limited the award to Hamilton's judicial efforts to obtain Baldwin's child support payments. RP (August 19, 2011) at 27.

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⁸ The elements of custodial interference are set forth at RCW 9A.40.060 and 070. The Pacific County Prosecuting Attorney, Mr. David Burke, concluded the elements of custodial interference were not met and chose not to charge. RP (August 19, 2011) at 23-24. The superior court never made a finding of custodial interference. See RP (August 19, 2011) 1-31; CP at 155-57.

On October 28, 2011, the superior court entered a new support order, which largely mirrored earlier orders, setting Baldwin's support obligation. CP 105-113. In addition, the new support order directed DCS to pay Hamilton the \$1,674 in child support it had collected from Baldwin. CP at 63, 111. Hamilton and DCS agreed to include language in the order absolving Hamilton of any child support obligation during the time B.H. lived with the Shoots, even though this issue had not been pled or argued. CP at 111.⁹ Because Hamilton and DCS could not agree on the attorney fees issue, the superior court reserved this issue for further consideration. CP at 105, 112.¹⁰ Shortly after this, OAH dismissed the administrative proceedings to establish Hamilton's child support obligation because Hamilton's support obligation had been addressed judicially. CP at 233.

On January 12, 2011, Hamilton identified a legal basis for obtaining attorney fees. CP 116-26. He submitted briefing primarily relying on RCW 26.26.140, which authorizes fee awards against the State in parentage actions when the State has brought or defended a frivolous action. CP at 116-26. Hamilton argued that DCS's actions to assess

⁹ In February 2011, Hamilton filed a motion requesting several forms of relief, including a request that his support obligation to the State be set at zero. CP at 44. But he failed to serve DCS and dropped the issue in his later pleadings. CP at 64.

¹⁰ Two orders were entered on October 28, 2011. The first required DCS to pay attorney fees but did not set the amount. A second amended order struck this language and reserved the issue of attorney fees to provide additional time for the parties to resolve the dispute. CP at 105, 112. The amended order expressly supersedes the first one entered earlier that day. CP at 105, 106.

support administratively had been frivolous. CP at 122. Contrary to his earlier claims that he had incurred the bulk of his fees pursuing his Youth at Risk action judicially,¹¹ Hamilton now claimed that most of his attorney fees arose from efforts to resist DCS's administrative actions to set his support obligation administratively. CP at 125. Hamilton argued, in the alternative, that the APA authorized a fee award because he *could have* brought a petition for judicial review of the agency action but hoped that would be unnecessary. CP at 124-25.

DCS responded that it was not frivolous to defend its claim to the child support collected from Baldwin because the money was owed for times B.H. was living with the Shoots and was supported with public assistance. CP at 228. It argued that, per RCW 26.23.035, DCS may distribute a child support payment to a physical custodian other than the payee when the physical custodian has the legal custodian's consent. CP at 228.

DCS further asserted that attorney fees were unavailable under RCW 4.84.350 because fees can be awarded under this statute only for judicial review of an administrative proceeding, and here there was no administrative appeal or judicial review because DCS abandoned its efforts to assess child support administratively once the superior court

¹¹ RP (August 19, 2011) at 17, 25; CP at 9.

entered its October 28, 2011 order ruling that Hamilton owed no child support. CP at 228-29, 233.

The superior court nevertheless ruled that Hamilton was entitled to attorney fees under RCW 26.26.140 because DCS's defenses to his petition and motion were frivolous. SCP at 503. The superior court also ruled Hamilton was entitled to fees under RCW 4.84.350 because he had prevailed in a judicial review of an agency action, even though Hamilton did not cite or rely on RCW 4.84.350 in his pleadings. CP at 126. Without explaining its fee calculation, the superior court awarded Hamilton \$12,000 in attorney fees. SCP at 502-04; RP (January 27, 2012) at 1-3.

V. ARGUMENT

A. Summary Of Argument

Washington follows the "American rule" for awarding attorney fees. *Rettkowski v. Dep't of Ecology*, 76 Wn. App. 384, 389, 885 P.2d 852 (1994), *aff'd in part, rev'd on other grounds in part*, 128 Wn.2d 508, 910 P.2d 462 (1996). Under the "American rule," parties are responsible for their own attorney fees unless cost shifting is permitted under specific statutory authority, contractual provision, or recognized ground in equity. *Wagner v. Foote*, 128 Wn.2d 408, 416, 908 P.2d 884 (1996);
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Clark v. Washington Horse Racing Comm'n, 106 Wn.2d 84, 720 P.2d 831 (1986); *Ancheta v. Daley*, 77 Wn.2d 255, 461 P.2d 531 (1969).

Hamilton argues that he is entitled to attorney fees under RCW 4.84.185 because it was frivolous for DCS to assert its statutory authority to retain the child support it had collected from Baldwin when Hamilton was the legal custodian, for the time B.H. was living with the Shoots and receiving public assistance. DCS's defense cannot be considered frivolous so long as it is rational. *Goldmark v. McKenna*, 172 Wn.2d 568, 583, 259 P.3d 1095 (2011). Here it was rational for DCS to assert the State was entitled to keep Baldwin's child support payments when the law authorizes the State to keep them.

Hamilton also asserts he is entitled to attorney fees under RCW 4.84.350 because he prevailed in a judicial review of agency action—he claims he “prevailed” because his support obligation would have been established administratively if he had not obtained a superior court order relieving him from this obligation. SCP at 503. Hamilton, however, never complied with the most basic requirements for seeking judicial review: no agency action was appealed, no administrative record was filed or reviewed, and the parties to the administrative proceeding were never served. *See* RCW 34.05.542; RCW 34.05.546. Because he did not fulfill the statutory requirements to invoke the superior court's

appellate jurisdiction, the superior court lacked subject matter jurisdiction to determine that Hamilton was a prevailing party and to award fees under RCW 4.84.350.

Moreover, even if RCW 4.84.350 applied, it is not enough to be a prevailing party—Hamilton is not entitled to fees under RCW 4.84.350 unless DCS's action of initiating administrative proceedings to set his child support obligation was not substantially justified. DCS's actions were substantially justified under RCW 74.20A.055 since there was no court order addressing Hamilton's obligation. Furthermore, even if Hamilton is entitled to attorney fees, which he is not, RCW 4.84.350 entitles him to attorney fees only for judicial level representation. Because DCS never contested Hamilton's claim in superior court that he should be relieved from having to pay child support, any attorney fees attributable to DCS are nominal.

B. Standard Of Review

When a superior court reviews the statutory legal standard that applies to an award of fees, it is reviewing a conclusion of law, which is reviewed de novo. *Gray v. Pierce Cnty. Housing Auth.*, 123 Wn. App. 744, 760, 97 P.3d 26 (2004). Whether the amount of the fee award is reasonable is reviewed for an abuse of discretion. *North Coast Electric Co. v. Selig*, 136 Wn. App. 636, 642-43, 151 P.3d 211 (2007); *Zink v. City*

of *Mesa*, 137 Wn. App. 271, 277, 152 P.3d 1044 (2007). Discretion is abused if the award is manifestly unreasonable or based upon untenable grounds or reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

C. Because Hamilton Filed a Child Support Modification Action, Attorney Fees Are Unavailable Under RCW 26.26.140

The superior court awarded Hamilton attorney fees under RCW 26.26.140. SCP at 502-03. This statute authorizes attorney fee awards only in parentage actions. RCW 26.26.140 in its entirety reads:

The court may order reasonable fees of experts and the child's guardian ad litem, and other costs of the action, including blood or genetic test costs, to be paid by the parties in proportions and at times determined by the court. The court may order that all or a portion of a party's reasonable attorney's fees be paid by another party, except that an award of attorney's fees assessed against the state or any of its agencies or representatives shall be under RCW 4.84.185.

Because parentage is not at issue, this statute does not apply.

In *In re Yeamans*, 117 Wn. App. 593, 72 P.3d 775 (2003) the Court was asked to award attorney fees in a parenting plan modification action under RCW 26.26.140 several years after paternity had been established under the Uniform Parentage Act (RCW 26.26). The *Yeamans* Court concluded that because the modification action was brought under RCW 26.09, the attorney fees statute in that chapter applied instead. *Yeamans*, 117 Wn. App. at 601. Similarly to the *Yeamans* case,

Hamilton's petition to modify child support is brought under RCW 26.09 and not under RCW 26.26. See RCW 26.26.160 (child support orders entered in parentage actions are to be modified under RCW 26.09.170 and 175). Hamilton's petition even references RCW 26.09.170 and 175 in the footer on each page. CP at 1-3. Although Hamilton is free to assert he is entitled to attorney fees directly under RCW 4.84.185, RCW 26.26.140 does not apply.

D. It Was Not Frivolous For DCS To Oppose Hamilton's Attempt To Obtain Child Support Payments For The Period B.H. Did Not Live With Him And the State Paid Public Assistance For Her Care, When State Laws Authorizes the State To Keep Those Payments

1. Attorney Fees Cannot Be Awarded Under RCW 4.84.185 If The Defense Can Be Supported By Rational Argument

The superior court ruled that DCS's responses to Hamilton's child support petition and motions were frivolous under RCW 4.84.185. SCP at 503. This statute applies to any civil action and authorizes attorney fees only where the court finds "that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause...." RCW 4.84.185.

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An action or defense is frivolous if it cannot be supported by any rational argument based in fact or in law. *Goldmark*, 172 Wn.2d. at 583; *Curhan v. Chelan Cnty.*, 156 Wn. App. 30, 230 P.3d 1083 (2010). The action or defense must be viewed in its entirety, and only if it is frivolous as a whole will an award be appropriate. *Biggs v. Vail*, 119 Wn.2d 129, 133-37, 830 P.2d.350 (1992); *In re Cooke*, 93 Wn. App. 526, 530, 969 P.2d 127 (1999).

2. DCS's Defense Was Rational Because It Was Grounded In Statute And Was Supported By The Facts

It was not frivolous for DCS to oppose sending Baldwin's support payments to Hamilton when the State was supporting B.H. through public assistance. RCW 26.23.035 specifically authorizes DCS to distribute support payments to "another person who has lawful physical custody of the child or custody with the payee's consent." RCW 26.23.035(2).

It is undisputed that B.H. lived with the Shoots from July 26, 2010, through December 18, 2010. CP at 90, 116-18, 236. Ms. Shoot signed a declaration under oath that she did not wrongfully deprive the legal custodian [Hamilton] of physical custody. CP at 254. CPS workers confirmed through repeated contacts with Hamilton that he was willing to let B.H. live with the Shoots, and a CPS worker was available as a witness at the hearing. CP at 238-47, RP (August 19, 2011) 20 ll. 24-25.

B.H.'s right to child support was assigned to the State by operation of law when the Shoots applied for public assistance on B.H.'s behalf. RCW 74.20.330; RCW 74.20A.030. If public assistance is paid for the care and maintenance of a child, the State stands in the shoes of the person caring for the child and can seek reimbursement through the principle of subrogation. *Id*; *State v. Base*, 131 Wn. App. 207, 217, 126 P.3d 79 (2006).

Although the superior court later ruled the Hamilton was entitled to the support payments because the Shoots lacked legal custody, RP (August 19, 2011) at 21 ll. 8-14, 24 ll. 16-17, this does not mean DCS's defense was frivolous. State law does not require DCS to disburse support to the legal custodian when the child is living elsewhere with the legal custodian's consent. RCW 26.23.035. Here, there was no dispute that B.H. lived with the Shoots, and DCS would have presented testimony showing that Hamilton consented to the arrangement had the court not deemed such testimony irrelevant. RP (August 19, 2011) at 20-24.¹² Moreover, Hamilton cited no legal authority to the superior court showing
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¹² DCS's failure to appeal the court's decision requiring DCS to send child support to Hamilton should not be read as an endorsement of the court's opinion. DCS disagrees with the decision and with the unwarranted exclusion of relevant evidence, but did not wish to expend additional public resources on the \$1,674 in dispute.

that his right to the payments was superior to that of the State. CP at 66-67, 89-90, 92-93.

The purpose of the frivolous lawsuit statute is to discourage frivolous lawsuits or defenses and to compensate the targets of such lawsuits for fees and expenses incurred in fighting meritless cases. *Biggs*, 119 Wn.2d at 137. The legislative history of the statute shows it was originally enacted to discourage lawsuits brought solely for spite, nuisance or harassment. *Id.* at 134-35. *See also Suarez v. Newquist*, 70 Wn. App. 827, 832-33, 855 P.2d 1200 (1993). It was never intended to discourage the type of good faith defense DCS presented in this case.

DCS's defense to retaining the child support it collected from Baldwin was not frivolous because it has a solid statutory basis under RCW 26.23.035(2), RCW 74.20.330, and RCW 74.20A.030. RCW 26.23.035(2) authorizes DCS to distribute child support payments to a person who has custody of the child with the legal custodian's consent. In this case, the Shoots had physical custody of B.H. for the time period at issue, and Hamilton repeatedly consented to B.H. living with the Shoots. Because B.H. was supported by public assistance, RCW 74.20.330 and RCW 74.20A.030 authorized DCS to retain the child support to which B.H. was entitled and that otherwise would have been distributed to Hamilton. Based on the information DSHS received, which it validated

through contact with Hamilton, all actions taken by DCS were to ensure adequate support for B.H. and were authorized by these statutes. The record contains no evidence of any kind that DCS acted out of spite or to cause nuisance or harassment to Hamilton.

Nor can the superior court's finding of frivolousness find any basis in DCS's response to Hamilton's judicial efforts to avoid being assessed a support obligation. DCS did not resist Hamilton's superior court efforts to avoid paying support for this time period. Neither Hamilton nor DCS litigated the issue. Rather, both parties agreed to include language in Baldwin's child support order that relieved Hamilton of having a support obligation of his own, even though this issue was outside the scope of the petition. CP at 111 ll. 18-19.

Finally, Hamilton contends that it was frivolous for DCS to engage in administrative efforts to require him to pay child support for times B.H. lived with the Shoots. CP at 120, 122-23. The superior court, however, lacked subject matter jurisdiction to award attorney fees under RCW 4.84.185 for administrative level activity, absent an appeal.¹³

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¹³ Because Hamilton's argument overlaps extensively with his claim that he is entitled to fees under RCW 4.84.350, DCS will address this claim in section "E(3)" of the brief below.

3. If Attorney Fees Are Awarded Under RCW 4.84.185, They Should Be Limited to Reasonable Fees Incurred Opposing DCS's "Frivolous" Defense

Because DCS's defense was not frivolous, attorney fees should not be awarded under RCW 4.84.185. But even if DCS's defense had been frivolous, the superior court failed to limit the award as provided by RCW 4.85.185. This statute expressly limits an award of fees to those actually incurred defending against a frivolous claim or action. *Highland Sch. Dist. No. 203 v. Racy*, 149 Wn. App. 307, 316, 202 P.2d 1024 (2009).

Because the action to obtain child support paid by Baldwin was filed by Hamilton, any fee award against DCS must be limited to amounts Hamilton incurred opposing any frivolous defenses advanced by DCS. Here, DCS did not submit any pleadings in response to Hamilton's motion; its defense was limited to oral argument. RP (August 19, 2011) at 13-30. Hamilton therefore did not file any responsive pleadings addressing DCS's defense. At most, Hamilton was required to engage in oral argument on August 19, 2011, instead of being able to present an agreed order.

Opposing counsel's billing statement shows that Hamilton was billed \$1,196 for that court appearance. CP at 201. But opposing counsel represented Hamilton on other matters not involving DCS when she appeared in court that day. Opposing counsel also obtained a signature

from Baldwin's attorney on a proposed post-secondary support order and presented that order. RP (August 19, 2011) at 2. The billing statement fails to detail the work she performed and how much time was allocated to each matter. CP at 201.

Because DCS's defense was limited to one oral argument, Hamilton's attorney fees must likewise be equally limited. Even if Hamilton is awarded fees for having to oppose DCS's efforts to keep Baldwin's support payments, he is entitled to be compensated only for the portion of the August 19, 2011, court appearance involving DCS.

E. Hamilton Is Not Entitled To A Fee Award Under RCW 4.84.350, When He Never Sought Judicial Review Of An Administrative Action And Failed To Invoke The Superior Court's Subject Matter Jurisdiction

1. Hamilton's Petition To Modify Child Support Does Not Meet Statutory Requirements For An Administrative Appeal

Attorney fees are *not* available under RCW 4.84.350 when Hamilton did not meet the threshold requirements for seeking "judicial review" under the APA. *See Cobra Roofing Servs., Inc. v. Dep't of Labor & Indus*, 157 Wn.2d 90, 99, 135 P.3d 913 (2006) (Attorney fees under RCW 4.84.350 are limited to "judicial review" as that term is defined in the APA, RCW 34.05). RCW 34.05 provides the exclusive means of

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obtaining judicial review of agency action. RCW 34.05.510; *Cobra Roofing Servs*, 157 Wn.2d at 99.

Hamilton did not comply with the most basic requirements of the judicial review process under the APA.¹⁴ Instead of filing a petition for judicial review of agency action, he filed a petition for child support modification. *See* RCW 34.05.514; CP 1-3. Only the last sentence of the petition even pertains to DCS. CP at 3.¹⁵

The petition falls far short of statutory requirements for initiating a review of agency action, which are set forth at RCW 34.05.546.¹⁶ CP at 1-3. The petition does not include: (1) Hamilton's name and mailing address; (2) the name and mailing address of the agency whose action is at

¹⁴ The superior court exercises appellate jurisdiction when reviewing agency action under the Administrative Procedure Act. *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit Cnty.*, 135 Wn.2d 542, 555, 958 P.2d 962 (1998). "Acting in its appellate capacity, the superior court is of limited statutory jurisdiction, and all statutory procedural requirements must be met before jurisdiction is properly invoked." *Id.* *See also Accord Conom v. Snohomish Cnty.*, 155 Wn.2d 154, 157, 118 P.3d 344 (2005) ("When a superior court acts in an appellate capacity, [it] has only the jurisdiction as conferred by law. Thus, before a superior court may exercise its appellate jurisdiction, statutory procedural requirements must be satisfied.")

¹⁵ It reads: "The court shall modify the [court] order of child support by.... ordering back support from the State and from Michelle for the \$375 per month since July 2010, when the State cut off the support to James Hamilton after the Shoots applied for child support for [B.H.]" CP at 3.

¹⁶ RCW 34.05.546 provides: A petition for review must set forth:

(1) The name and mailing address of the petitioner; (2) The name and mailing address of the petitioner's attorney, if any; (3) The name and mailing address of the agency whose action is at issue; (4) Identification of the agency action at issue, together with a duplicate copy, summary, or brief description of the agency action; (5) Identification of persons who were parties in any adjudicative proceedings that led to the agency action; (6) Facts to demonstrate that the petitioner is entitled to obtain judicial review; (7) The petitioner's reasons for believing that relief should be granted; and (8) A request for relief, specifying the type and extent of relief requested.

issue; (3) the identity of persons who were parties in any adjudicative proceeding leading to the agency action; (4) facts demonstrating that Hamilton is entitled to judicial review; or (5) Hamilton's reasons for believing that relief should be granted. Moreover, even though the administrative hearing was limited to setting Hamilton's support obligation, the Petition does not even put this issue before the court. CP at 1-3, 143-53, 233.

The petition shows that instead of engaging in the administrative process under the APA, Hamilton intended to proceed *de novo* in superior court to: (1) increase Baldwin's child support obligation; and (2) obtain the child support DCS had collected from her. CP at 1-3. He explicitly wanted to bypass the administrative hearing and judicial review process, and this is exactly what occurred. CP at 172, 252.

The administrative proceeding that was initiated by DCS was repeatedly continued because Hamilton preferred the judicial forum over the administrative one. CP at 184, 214, 252. No final agency decision was ever entered, much less appealed. CP at 233. No agency record was ever filed or reviewed by the superior court. CP at 1-264, SCP 265-504. The record before the superior court consists of original superior court filings instead of being confined to the administrative record, as required by the APA. *Id.*; RCW 34.05.558; .562. Thus, Hamilton's superior court

action does not come within the purview of RCW 34.05.350, because no administrative appeal was filed.

Hamilton even acknowledged he never sought judicial review of an agency action in his superior court attorney fee briefing. CP at 124-25. He asserted that he *could* bring a petition for judicial review under the APA, but he hoped that would be unnecessary. CP at 124. He did not cite RCW 4.84.350 or rely on it in his attorney fee briefing. CP at 116-26.

The proposed order on attorney fees Hamilton provided to the superior court, and which the superior court signed, departs from Hamilton's briefing by holding that Hamilton prevailed in a judicial review of agency action under RCW 4.84.350. *See* CP at 116-26; SCP at 503. But, because there was no judicial review of agency action under the Administrative Procedure Act, attorney fees are unavailable under RCW 4.84.350.

2. Even If Hamilton's Child Support Modification Action Could Be Considered An Administrative Appeal, His Failure To Serve The Parties Deprived The Superior Court Of Subject Matter Jurisdiction

Even if Hamilton's child support modification action could be considered to be an administrative appeal, attorney fees would still be unavailable under RCW 4.84.350. Judicial review proceedings under the APA are statutory proceedings that invoke the superior court's limited

appellate jurisdiction, not the court's general or original jurisdiction. *Mader v. Health Care Auth.*, 149 Wn.2d 458, 468, 70 P.3d 931 (2003). Because the superior court acts in its appellate capacity, a party must meet all statutory procedural requirements before the superior court's subject matter jurisdiction is properly invoked. *Diehl v. W. Wash. Growth Mgmt. Hearings Bd.*, 153 Wn.2d 207, 217, 103 P.3d 193 (2004). *Accord Conom, v. Snohomish Cnty.*, 155 Wn.2d 154, 157, 118 P.3d 344 (2005); *Skagit Surveyors and Eng'rs, LLC v. Friends of Skagit Cnty.*, 135 Wn.2d 542, 555, 958 P.2d 962 (1998).

A superior court does not obtain jurisdiction unless a petition for review is timely filed and served on all the parties. *Union Bay Preservation Coalition v. Cosmos Dev. & Admin. Corp.*, 127 Wn.2d 614, 617-18, 902 P.2d 1247 (1995). The pertinent language in RCW 34.05.542 provides:

A petition for judicial review of an order shall be filed with the court and served on the agency, the office of the attorney general, and all parties of record within thirty days after service of the final order.

RCW 34.05.542(2).

The burden of proving compliance with the APA's procedural requirements is on the petitioner; the petitioner must set forth "[f]acts to demonstrate that [he is] entitled to obtain judicial review." RCW 34.05.546(6).

Service of the petition on the agency is accomplished by delivery of a copy of the petition to the office of the director, or other chief administrative officer or chairperson of the agency, at the principal office of the agency. RCW 34.05.542(4). Strict compliance is required; substantial compliance with the APA's service requirements is insufficient to invoke the superior court's appellate jurisdiction. *Union Bay*, 127 Wn.2d at 620.

Hamilton failed to serve the Department of Social and Health Services or the Office of the Attorney General with an administrative appeal. He served his petition for modification of child support on the Pacific County Prosecuting Attorney, but this does not meet statutory requirements. CP at 172. Further, Hamilton failed to serve the Shoots with the modification action, even though they were parties to the administrative action allegedly being appealed. CP at 184, SCP at 503.

Litigants cannot waive subject matter jurisdiction. *Skagit Surveyors*, 135 Wn.2d at 555. Moreover, subject matter jurisdiction can be raised at anytime by any party to the appeal, including one who has been properly served. *Id.*

Lack of subject matter jurisdiction deprives the superior court of the ability to rule on the merits of the controversy. *Id.*; *Inland Foundry Co., Inc. v. Spokane Cnty. Air Pollution Control Auth.*, 98 Wn. App. 121,

123-24, 989 P.2d 102 (1999) (“Without subject matter jurisdiction, a court or administrative tribunal may do nothing other than enter an order of dismissal”). *See also Conom*, 155 Wn.2d at 157 (“[B]efore a superior court may exercise its appellate jurisdiction, statutory procedural requirements must be satisfied. A court lacking jurisdiction must enter an order of dismissal.”). The superior court had no authority to determine that Hamilton was a prevailing party or to award fees under RCW 4.84.350. Thus, the portion of the award arising from administrative level representation should be reversed.

3. Even Had Hamilton Filed An Administrative Appeal And Successfully Invoked The Subject Matter Jurisdiction Of The Superior Court, Attorney Fees Should Not Be Awarded Because Agency Action To Set Hamilton’s Support Obligation Was Substantially Justified

The superior court awarded attorney fees to Hamilton on the grounds that he prevailed in a judicial review of an agency action. SCP at 503. This is not the correct legal standard for determining if Hamilton is entitled to attorney fees under RCW 4.84.350. This fee statute provides in relevant part:

Except as otherwise specifically provided by statute, a court shall award a qualified party that prevails in a judicial review of an agency action fees and other expenses, including reasonable attorneys’ fees, *unless the court finds that the agency action was substantially justified or that circumstances make an award unjust*. A qualified party shall be considered to have prevailed if the qualified party

obtained relief on a significant issue that achieves some benefit that the qualified party sought.

RCW 4.84.350(1)(a) (emphasis added).

Attorney fees can be awarded to a party who prevails in a judicial review of agency action only *if* the court finds that the agency action was not substantially justified or circumstances would not make an award unjust. *Id.*

“Substantially justified” means justified to a degree that would satisfy a reasonable person.” *Silverstreak v. Wash. State Dep’t of Labor and Indus.*, 159 Wn.2d 868, 892, 154 P.3d 891 (2007). It requires the State to show that its position has a reasonable basis in law and fact. *Cobra Roofing*, 122 Wn. App. at 420; *Aponte v. DSHS*, 92 Wn. App. 604, 623, 965 P.2d 626 (1998). The relevant factors in determining whether the State was substantially justified are, therefore, the strength of the factual and legal basis for its action.

Here, DCS’s actions to establish a child support obligation against Hamilton were substantially justified. DCS has administrative jurisdiction to set child support “if there is no order that establishes the responsible parent’s support obligation or specifically relieves the responsible parent of a support obligation.” RCW 74.20A.055(1). At the time the administrative notice was served, the court had addressed Baldwin’s obligation, but not Hamilton’s. CP at 8-15. Although Hamilton was

served notice on November 18, 2010, that DCS was seeking to establish his support obligation administratively, he did not obtain a court order relieving him from paying child support until nearly one year later on October 28, 2011. CP at 105-13, 142. Once he obtained the order, the administrative action was promptly dismissed. CP at 233.

Hamilton asserts that DCS should never have attempted to establish his support obligation administratively because the Shoots engaged in custodial interference. CP at 119-20, 171-72. But the Shoots vigorously contested the allegation of custodial interference, the Pacific County Prosecuting Attorney concluded the elements of custodial interference were not met in this case, and no court entered any finding of custodial interference. As a matter of law, custodial interference is an affirmative defense to owing child support; it is not a basis for concluding that DCS lacked jurisdiction to set Hamilton's child support obligation. *See* RCW 74.20A.065; WAC 388-14A-3370 (DCS will not establish a child support obligation if the child was taken or enticed from the parent's custody and the parent has not consented to the arrangement). Because Hamilton's administrative hearing was continued repeatedly so his support obligation could be addressed in court, it is unknown whether this defense would have proved successful. Hamilton's assertion of an affirmative
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defense to paying support, however, does not lead to the conclusion that DCS's actions were not substantially justified.

Hamilton also asserts that DCS's actions assessing support against him administratively were frivolous under RCW 4.84.185. The provisions of RCW 4.85.185 are expressly made applicable to judicial review of agency action under the APA. *See* RCW 34.05.598; *In Re MacGibbon*, 139 Wn. App. 496, 505 n.20, 161 P.3d 441 (2007). Hamilton must meet a much higher threshold to show DCS's administrative action was frivolous (state action is irrational) than to meet the substantially justified standard (state action must be reasonable) under RCW 4.84.350. Because Hamilton has not shown that DCS's action was not substantially justified, he cannot show that it was frivolous.

F. If Attorney Fees Are Awarded They Should Be Limited To Expenses Incurred In Judicial Proceedings

Even if this Court were to determine that Hamilton satisfies the criteria necessary to obtain fees under RCW 4.84.350, he is not entitled to fees for administrative level activity. Fees under RCW 4.84.350 are limited to those incurred during judicial review. *See Cobra Roofing*, 157 Wn.2d at 99-100 (fees under RCW 34.05.350 apply only to the court's review, not administrative proceedings—even where administrative proceedings are quasi-judicial); *Alpine Lakes Prot. Soc'y v. Dep't of*

Natural Res., 102 Wn. App. 1, 19, 979 P.2d 929 (1999), *amended on recons.* (2000) (fees are not available at the administrative level because legislature did not intend to make them available).

Hamilton incurred virtually no attorney fees in superior court related to his claim that he should not be required to pay support for B.H. while she was living with the Shoots. This issue was barely addressed in superior court pleadings, and it was not argued because DCS agreed that Hamilton should not be assessed a support obligation. CP at 44; RP (August 19, 2011) at 1-30. The matter was resolved by including a single sentence in the child support modification order that expressly relieved Hamilton from having to pay child support for B.H. while she lived with the Shoots. CP at 111. Thus, any attorney fees available under RCW 4.84.350 are at most, nominal.

G. The Superior Court Incorrectly Calculated The Attorney Fee Award By Counting Some Hours Twice And Including Hours Spent On Matters Not Involving DCS

Even if the Court were to require DCS to pay all of Hamilton's DCS-related attorney fees for both administrative and judicial proceedings, the \$12,000 awarded is excessive and not supported by the record. The superior court added \$6,451.86, \$2,562.50, and \$3,753.56

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together to reach \$12,767.92, and without explanation reduced this total by \$767.57 to arrive at \$12,000. SCP at 503.¹⁷

The \$6,451.86 figure is the amount of fees that Hamilton's attorney identified as relating to litigation involving DCS, but is overly inclusive. CP at 197-201, 204. His attorney's billing statement identifies the total number of hours worked on a given day and provides a general description of all the work performed. CP at 197-203. Because the billing statement combines time spent on DCS-related litigation with other matters, without breaking down how much time was spent on each task, it is not possible to determine how much time actually was spent on DCS-related litigation. *Id.*

Opposing counsel appears to have estimated that the portion of the \$6,451.86 amount directly related to representing Hamilton against DCS was \$3,753.56. CP at 125, 195. However, the court set that amount out separately and added it back in. Accordingly, the \$3,753.56 amount was billed twice; once on its own, and again within the \$6,451.86. Moreover, based on opposing counsel's own estimate, the remainder of the \$6,451.86

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¹⁷ The superior court took the issue of whether attorney fees would be awarded under advisement and then signed the order proposed by Hamilton. RP 2-3 (January 27, 2012). Hamilton's proposed order left the amount of the award blank. SCP at 503. The court did not explain how it calculated the fees. *Id.*

figure (i.e., \$6,451.86 minus \$3,753.56) does not relate to litigation involving DCS and should not have been awarded. If attorney fees are to be awarded, therefore, only the \$3,753.56 should be allowed, and the \$6,451.86 figure should be disallowed in its entirety.

The \$2,562.50 figure is for additional fees incurred by Hamilton between August 30, 2011 and January-9, 2011. CP at 125. This amount mostly consists of fees arising from attorney fees litigation between Hamilton and DCS. It is slightly more than the total amount billed between August 30, 2011, and January 9, 2012, and includes some fees for Hamilton's child support modification action against Baldwin and administrative level litigation. CP at 202-03.

Even if Hamilton were to be awarded all his attorney fees for administrative and judicial litigation involving DCS, his fees would be less than \$6,316.06 (\$3,753.56 plus \$2,562.50). The \$6,316.06 amount includes billings for matters not involving DCS. CP at 197-203. At minimum, the Court should require a proper accounting of attorney fees by opposing counsel before assessing them against DCS.

Of course, if this Court rules that Hamilton is not entitled to attorney fees for resisting DCS's administrative efforts to establish his child support obligation and for seeking to require DCS to pay Baldwin's

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child support payments collected while B.H. was living with the Shoots, the \$6,316.06 must be reduced even further—to zero.

VI. CONCLUSION

The superior court decision should be reversed. Hamilton should not be awarded any attorney fees. Alternatively, attorney fees should be recalculated after this Court clarifies the basis and scope of the attorney fee award.

RESPECTFULLY SUBMITTED this 14 day of May, 2012.

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CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a true and correct copy of the foregoing document on all parties or their counsel of record as follows:

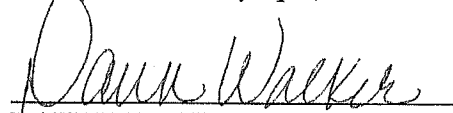
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- By E-mail PDF: kris@southsoundmediation.com
 By US Mail:

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

EXECUTED this 14th day of May, 2012 at Olympia, WA.


DAWN WALKER

APPENDIX 1

1 THIS MATTER came before the Court on Mr. James Hamilton's motion for
2 attorney's fees against the State of Washington in the instant child support action. The
3 State of Washington is represented by Attorney General ROBERT M. MCKENNA by
4 and through Assistant Attorney General Lianne S. Malloy. Mr. Hamilton is represented
5 by his attorney, Kris Zabriskie. The court having considered the pleadings on file in the
6 above cause, and the argument of counsel and law,
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8 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Attorney fees shall
9 be awarded against the State of Washington in the amount of \$^{*}12,000.^{**} Mr.
10 James Hamilton is entitled to fees under RCW 26.26.140. Furthermore, he has
11 demonstrated that the State's response to his petition and motions were frivolous or
12 advanced without reasonable cause as required by RCW 4.84.185.
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14 Mr. Hamilton met his burden of showing that he has prevailed in a judicial review
15 of agency action under RCW 4.84.350. Had Mr. Hamilton not responded to the
16 administrative action, the State would have entered support orders against him. He
17 appeared by phone at at least two of these administrative hearings and had to obtain
18 contested continuances from the Administrative Law Judge. The State contested the
19 continuances.

20 DONE IN OPEN COURT this 27th day of January, 2012.

21 *12,767.92 RIN COUNTEO TO \$12,000.*
22 \$[3,753.56 + 2,562.50 +
23 + 6,451.86 = \$12,767.92]


HONORABLE MICHAEL J. SULLIVAN

24
25
ORDER AWARDING ATTORNEY'S FEES-2

Olson & Zabriskie, Inc.
A Professional Service Corporation
104 West Marcy Avenue
Montesano, Washington 98863
Telephone: (360) 249-6174
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Presented by:

KRIS ZABRISKIE, WSBA #17938
Attorney for Petitioner

Approved for entry as to form:

ROBERT M. MCKENNA
Attorney General

LIANNE S. MALLOY, WSBA #15028
Assistant Attorney General
Attorney for DSHS

)/tb/h/order awarding fees

ORDER AWARDING ATTORNEY'S FEES-2

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