

92296-9

NO. 46313-0-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

In re the Matter of the Marriage of:

VICTOR M. ZANDI,

Petitioner,

vs.

DEANNA M. ZANDI,

Respondent.

FILED
SEP 29 2015
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON
CP

PETITION FOR REVIEW

John A. Hays, No. 16654
Attorney for Petitioner

1402 Broadway
Suite 103
Longview, WA 98632
(360) 423-3084

TABLE OF CONTENTS

	Page
Table of Authorities	3
A. Identity of Petitioner	4
B. Decision of the Court of Appeals	4
C. Issues Presented for Review	4
D. Statement of the Case	4
E. Argument Why Review Should Be Accepted	6
F. Conclusion	9
G. Appendix	
1. RCW 26.18.170(18)(d)	10
H. Affirmation of Service	11

TABLE OF AUTHORITIES

Page

Cases

Zandi v. Zandi,
No. 46313-0-II, 2015 WL 5287029 (Wn. Ct. App. Aug. 4, 2015) 7, 8

Statutes and Court Rules

RAP 13.4(b)(4) 6
RCW 26.18.170(18)(d) 7

A. *IDENTITY OF PETITIONER*

Victor M. Zandi asks this court to accept review of the decision designated in Part B of this motion.

B. *DECISION*

Petitioner seeks review of each and every part of the published decision of the Court of Appeals reversing the judgement of the Cowlitz County Superior Court. A copy of the Court of Appeals' decision is attached along with a copy of the order granting the motion to publish.

C. *ISSUES PRESENTED FOR REVIEW*

In a situation in which (1) one parent provides medical insurance pursuant to a parenting plan that requires him to pay 100% of uninsured medical expenses, (2) that parent's child needs a medical procedure which is covered under the medical insurance provided it is performed at an in-network facility, and (3) the other parent elects to take the child to an out-of-network facility, does the resultant medical bill constitute an "uninsured medical expense" under RCW 26.18.170(18)(d) that the first parent must pay?

D. *STATEMENT OF THE CASE*

Tara Zandi is the 18-year-old daughter of Petitioner Victor Zandi and his ex-wife, Respondent Deanna Zandi. CP 206-207. Deanna Zandi is the primary residential parent. CP 247. Under an Amended Order of Support entered on December 9, 2009, Petitioner is required to provide medical insurance for Tara and is responsible for paying one hundred percent of Tara's uninsured medical expenses. CP 1-8.

For the past 20 years Petitioner has maintained health insurance for his

children through Kaiser Permanente. CP 207-208. Under that policy treatment for medical events is covered as long as the patient (1) uses a physician and facility approved by Kaiser, (2) obtains prior approval from Kaiser to use an outside provider or medical facility, or (3) goes to any treatment facility for emergent care provided a Kaiser facility is not available. CP 207-208, 237.

In June of 2011, Tara Zandi traveled to Ohio to spend some time with her maternal aunt. CP 207-208. During this period of time she developed kidney stones and her aunt took her to the emergency room (ER) at a local hospital not on Kaiser's list of approved facilities. CP 38-39, 207-208, 237. No Kaiser-approved emergent care facility was available in the area. *Id.* The local ER treated Tara, provided her with pain medication and released her. CP 42-46, 207-208. The next day Ms Zandi contacted Petitioner, informed him of Tara's trip to the emergency room, her need for treatment, and asked him to agree to have Tara's kidney stones treated at a non-Kaiser facility. CP 207-208. Petitioner told her to either have Tara taken to a Kaiser facility for treatment or contact Kaiser for pre-approval of treatment at a non-Kaiser facility as is required under his health insurance plan. *Id.*

Although a Kaiser facility was available a few of hours from Tara's location in Ohio, Ms Zandi arranged for Tara's kidney stone surgery at a non-Kaiser medical facility without first seeking pre-approval from Kaiser. CP

207-208, 237. Kaiser later refused to pay these medical bills because (1) the facility used was not part of Kaiser's network, (2) the surgery was non-emergent, and (3) noone had sought preapproval for use of a non-Kaiser facility. CP 207-208. Upon learning these facts Petitioner went through the Kaiser appeal process. *Id.* Kaiser later affirmed the decision denying coverage. CP 237.

Ms Zandi later brought the instant action, arguing that the bill for Tara's treatment was "uninsured" under the amended support order and that Petitioner should pay for it. CP 9-13. Following argument the court ordered Ms Zandi to pay 25% of the outstanding medical bills and ordered Petitioner Mr. Zandi to pay 75% of the outstanding medical bills. CP 246-248. Following entry of this order Ms Zandi filed timely notice of appeal. *See*, Notice of Appeal.

By decision filed August 4, 2015, and ordered published on September 9, 2015, the Court of Appeals reversed the decision of the trial court and ordered petitioner Mr. Zandi to pay all of the medical bill at issue because (1) those expenses were "uninsured," and (2) under the parenting plan Petitioner had the duty to pay 100% of uninsured medical expenses. Petitioner now requests that this court accept review of the decision of the Court of Appeals.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Under RAP 13.4(b)(4), this court will accept review of cases which

“involve[] an issue of substantial public interest that should be determined by the Supreme Court.” As the following explains, this case involves an issue of substantial public interest that is ripe for this court’s determination.

As is set out in the “Issues Presented for Appeal” in subsection C of this petition, this case squarely presents the question of what constitutes an “uninsured medical expense” under RCW 26.18.170(18)(d) in the context of a parenting plan in which one parent provides medical insurance which would have provided coverage had the other parent met the requirements of that plan. In this case the majority in the Court of Appeals found that in this context the medical bills that result in this context were “uninsured” simply because the insurance company refused to pay. The majority stated:

The parties disagree whether the child’s expenses are “health care costs not covered by insurance”; the mother contends that because Kaiser did not cover the expenses, they are uninsured, and the father argues that his Kaiser policy covered the expenses but the mother failed to follow the policy requirements to obtain coverage. Because the plain language of RCW 26.18.170 includes as “uninsured” expenses any costs “not covered by insurance” and because Kaiser is not covering the disputed medical expenses, we conclude that the trial court did not err in determining that the expenses were uninsured.

Zandi v. Zandi, No. 46313-0-II, 2015 WL 5287029, at 2 (Wn. Ct. App. Aug. 4, 2015) (footnote omitted).

The dissent read the same phrase “health care costs not covered by insurance” and came to the opposite conclusion. The dissent stated:

“Uninsured medical expenses’ includes premiums, copays, deductibles, along with other health care costs not covered by

insurance.” RCW 26.18.170(18)(d) (emphasis added). I would hold that while medical costs that an insurance company never promised to pay (such as premiums, copays, and deductibles) are “not covered,” medical costs that an insurance company promised to pay for subject to an in-network limitation are “covered.” RCW 26.18.170(18)(d). Thus, the latter are not “uninsured medical expenses” under RCW 26.18.170(18)(d).

Zandi v. Zandi, No. 46313-0-II, 2015 WL 5287029, at 3 (Wn. Ct. App. Aug. 4, 2015).

The dissent also pointed out a strong policy reason for finding that the costs in this case were “insured” under the statute. The dissent noted:

Basic fairness supports this interpretation, as illustrated by this case. Victor M. Zandi (the father) provided insurance that would have covered the costs for T.Z.’s kidney stone removal as long as the removal was performed by a Kaiser provider (or Kaiser’s prior approval was obtained). T.Z.’s kidney stone removal was provided by a non-Kaiser provider without Kaiser’s prior approval, resulting in a large medical bill that could have been avoided. The majority’s holding requires Victor to pay 100 percent of this large medical bill, even though Victor provided T.Z. with insurance that covered the kidney stone removal subject to the insurance plan’s in-network limitation and even though Victor was not responsible for violating that in-network limitation.

Under the majority’s holding, a parent with control over his or her child’s medical care could boundlessly violate the insurance plan’s in-network limitation with knowledge that the other parent would be forced to absorb the resulting costs. This is patently unfair. Furthermore, where the parent with control over the child’s medical care has no responsibility for the costs of violating the insurance plan’s in-network limitation, he or she has no incentive to avoid a violation.

Zandi v. Zandi, No. 46313-0-II, 2015 WL 5287029, at 3 (Wn. Ct. App. Aug. 4, 2015).

Given the thousands of parenting plans issued each year in this state in

which medical insurance is required and the payment of “uninsured” medical expenses is parsed between the divorcing parents, this case presents a scenario that will undoubtedly repeat itself in the Superior Courts and our appellate courts.

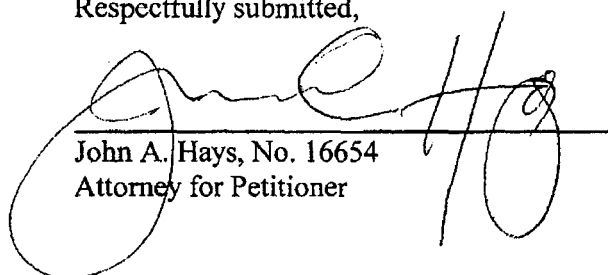
It is also significant that neither the majority opinion nor the dissent in this case cited to a Washington case addressing the factual and legal question here at issue. Thus, this case would provide an excellent opportunity for this court to add an example in our body of case law on this issue and would significantly benefit practitioners and courts when addressing questions concerning what constitutes an uninsured health care cost in the context of a parenting plan. As a result, Petition respectfully requests that this court accept review in this case.

F. CONCLUSION

For the reasons set out in this motion, this court should accept review of this case and reverse the decision of the Court of Appeal.

Dated this 22nd day of September, 2015.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Petitioner

APPENDIX

RCW 26.18.170(18)(d)

. . . .
(18) As used in this section: . . .

(d) "Uninsured medical expenses" includes premiums, copays, deductibles, along with other health care costs not covered by insurance.

COURT OF APPEALS OF WASHINGTON, DIVISION II

VICTOR M. ZANDI,
Petitioner,

vs.

DEANNA M. ZANDI,
Respondent.

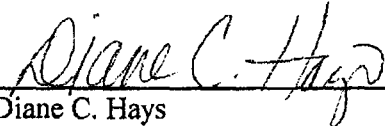
NO. 46313-0-II

**AFFIRMATION OF
OF SERVICE**

The under signed states the following under penalty of perjury under the laws of Washington State. On the date below I personally e-filed and/or placed in the United States Mail this Petition for Review with this Affirmation of Service Attached with postage paid to the indicated parties:

1. Mr. Darrel S. Ammons
Attorney at Law
1315 14th Avenue
Longview, WA 98632
dsalaw@cni.net
2. Victor M. Zandi,
661 22nd Avenue
Longview, WA 98632

Dated this 22nd day of September, 2015 at Longview, Washington.



Diane C. Hays

FILED
COURT OF APPEALS
DIVISION II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

2015 SEP -9 AM 11:55

DIVISION II

STATE OF WASHINGTON

In the Matter of the Marriage of:

VICTOR M. ZANDI,

Respondent,

v.

DEANNA M. ZANDI,

Appellant.

No. 46313-0-~~HY~~

[Signature]
DEPUTY

ORDER PUBLISHING OPINION

Respondent Victor M. Zandi has moved to publish the court's August 4, 2015 opinion. Appellant Deanna M. Zandi opposed Respondent's motion. The Court has determined that the opinion in this matter satisfies the criteria for publication. It is now

ORDERED, that the motion to publish is granted and the opinion's final paragraph reading:

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered:

is deleted. It is further

ORDERED that this opinion will be published.

PANEL: Jj. Worswick, Bjorgen, Melnick

DATED this 9TH day of SEPTEMBER, 2015.

[Signature]
Bjorgen, A.C.J.

FILED
COURT OF APPEALS
DIVISION II

2015 AUG -4 AM 10:00

STATE OF WASHINGTON

DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Marriage of:

No. 46313-0-II

VICTOR M. ZANDI,

Respondent,

v.

DEANNA M. ZANDI,

UNPUBLISHED OPINION

Appellant.

MELNICK, J. — Deanna M. Zandi (the mother) appeals an order requiring her to pay 25 percent of medical expenses incurred by T.Z. (the child). The mother argues that a December 9, 2009 child support order required Victor M. Zandi (the father) to pay all uninsured medical expenses. We agree with the mother and reverse.

FACTS

The order of child support between the parties, required the father to pay all uninsured medical expenses. The child is insured under the father's Kaiser Permanente (Kaiser) policy. The policy required an insured to seek care at a Kaiser-approved facility or physician or to obtain pre-approval for out-of-network doctors or facilities. Emergency care is covered at non-Kaiser facilities in the event a Kaiser facility is not available.

In July 2011, while visiting her aunt in Ohio, the child developed kidney stones. Her aunt took her to a non-Kaiser emergency room, which treated and released her. Kaiser paid for this emergency room visit. She needed follow-up surgery to remove a large kidney stone. The nearest

Kaiser medical facility was 4 to 8 hours away. The aunt took the child to a non-Kaiser facility for the follow up surgery. Although a doctor at this facility stated that Kaiser would cover the costs of the surgery, Kaiser refused to pay the approximately \$13,000 in medical bills. The father appealed through the Kaiser appeal process, and Kaiser denied the appeal because the surgery was performed by a non-Kaiser provider without any request for authorization or assistance from Kaiser regarding this matter.

On March 30, 2012, the mother filed a petition to modify child support and in it also requested the father to pay medical expenses incurred in July 2011 as "uninsured medical expenses." Clerk's Papers (CP) at 12. Following argument, the trial court ordered the mother to pay 25 percent and the father to pay 75 percent of the outstanding medical bills. In a written order, the court determined that because the mother was in a better position, as the primary residential parent, to secure coverage for the treatment through Kaiser, "the uninsured medical expenses for this incident should be" divided. CP at 247. The mother appeals. She argues that the trial court lacked the authority to ignore the terms of the child support order and apportion payment of uninsured medical expenses.

ANALYSIS

RCW 26.18.170¹ allows a parent to seek payment of medical expenses as set out in a child support order. The trial court concluded that the child's Ohio medical expenses were "uninsured."

¹ RCW 26.18.170(17) provides, in part:

If a parent required to provide medical support fails to pay his or her portion, determined under RCW 26.19.080, of any premium, deductible, copay, or uninsured medical expense incurred on behalf of the child, pursuant to a child support order, the department or the parent seeking reimbursement of medical expenses may enforce collection of the obligated parent's portion of the premium, deductible, copay, or uninsured medical expense incurred on behalf of the child.

The father argues on appeal that the uncovered medical expenses were insured and Kaiser refused to pay only because the mother did not follow policy requirements.

The father did not cross-appeal.² However, because the father is not seeking affirmative relief, he is permitted to argue any grounds supported by the record to sustain the trial court's decision. RAP 2.4(a) (barring affirmative relief to respondent in the absence of a cross appeal); *State v. Green*, 177 Wn. App. 332, 341 n.8, 312 P.3d 669 (2013). If we accept the father's argument that the medical expenses were not "uninsured," the trial court could apportion the expenses. Accordingly, we first address whether the trial court correctly determined that the child's medical expenses were uninsured. We then address whether the trial court properly allocated the expenses.

I. UNINSURED MEDICAL EXPENSES

RCW 26.18.170(18)(d) defines "[u]ninsured medical expenses" as "premiums, copays, deductibles, along with other health care costs not covered by insurance." Statutory interpretation is a question of law that we review de novo. *Clallam County v. Dry Creek Coal*, 161 Wn. App. 366, 385, 255 P.3d 709 (2011). When the plain language of the statute is unambiguous, our inquiry ends. *Dry Creek Coal*, 161 Wn. App. at 385. "Unambiguous statutes are not subject to interpretation; one looks at the plain language of the statute without considering outside sources." *Durland v. San Juan County*, 174 Wn. App. 1, 22-23, 298 P.3d 757 (2012).

² The father raises the issue whether the record is sufficient to allow review because the mother did not transcribe the hearing at which the trial court orally ruled to allocate the medical expenses. RAP 9.1. The written order is in the record, along with the medical documents and declarations considered by the court, and the facts are largely undisputed. Accordingly, we conclude that the record is sufficient to permit review.

The parties disagree whether the child's expenses are "health care costs not covered by insurance"; the mother contends that because Kaiser did not cover the expenses, they are uninsured, and the father argues that his Kaiser policy covered the expenses but the mother failed to follow the policy requirements to obtain coverage.³ Because the plain language of RCW 26.18.170 includes as "uninsured" expenses any costs "not covered by insurance" and because Kaiser is not covering the disputed medical expenses, we conclude that the trial court did not err in determining that the expenses were uninsured.

II. CHILD SUPPORT ORDER

The issue thus becomes whether the trial court had the authority to require the mother to pay 25 percent of the uninsured medical expenses after she sought to enforce a child support order requiring the father to pay 100 percent. As stated, the trial court concluded that the mother should pay part of the expense because, as the primary residential parent, she was in a better position to secure coverage for the kidney stone treatment by Kaiser Permanente.

We hold that the trial court abused its discretion by altering the terms of the child support order. While child support obligations may be modified under certain circumstances, those

³ The father additionally argues that the trial court found that the child was covered by his insurance and that this is a verity on appeal because the mother did not assign error to this finding. We do not read this finding as a determination by the trial court that the child's medical expenses were not "uninsured medical expenses." The full paragraph highlighted by the father states:

Among other things, the treatment included emergency room visits to the hospital and also surgery to remove the kidney stones. The child was covered through the father's Kaiser Permanente medical insurance provided by his employer. However, the nearest Kaiser facility is located in the Cleveland, Ohio area. Kaiser refused to cover the majority of the treatment, including surgery.

CP at 247. Neither party disputes that at the time of the incident, the child had medical insurance. This fact, however, does not control the outcome of this appeal. Even a covered person can incur "[u]ninsured medical expenses" as defined by RCW 26.18.170(18)(d) because the definition includes expenses such as premiums and copays that are regularly incurred by covered individuals.

46313-0-II

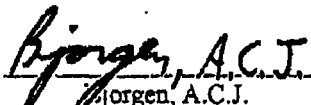
circumstances did not apply here. *See Schumacher v. Watson*, 100 Wn. App. 208, 213, 997 P.2d 399 (2000) (as a general rule, court must find a substantial change of circumstances before modifying an order). In so ruling, we are mindful that the record does not demonstrate that, under the circumstances, the mother acted unreasonably in choosing a non-Kaiser facility to perform the surgery. Therefore, we need not decide if, pursuant to the child support order, the father would have to pay all of the uninsured medical expenses if a Kaiser facility had been readily accessible and the mother acted unreasonably in not taking their child to it.⁴ The trial court acted without legal authority in changing the terms of the child support order and therefore abused its discretion in requiring the mother to pay part of the child's uninsured medical expenses. *See Morin v. Burris*, 160 Wn.2d 745, 753, 161 P.3d 956 (2007) (trial court abuses its discretion when its decision is based on untenable grounds).

We reverse.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


Melnick, J.

I concur:


Bjorgen, A.C.J.

⁴ While we understand the dissent's concerns, there are no facts in the record to indicate that the mother acted with an intent to cause unnecessary expense. Furthermore, the father remains entitled to seek modification of the child support order. RCW 26.09.170.

WORSWICK, J., (dissenting) — The majority holds that costs for T.Z.'s (the child's) kidney stone removal, which Kaiser Permanente (Kaiser) would have paid for but for a non-Kaiser provider performing the removal, constitutes "[u]ninsured medical expenses" under RCW 26.18.170(18)(d). I would hold that because T.Z.'s kidney stone removal would have been covered under the Kaiser insurance had the removal been performed by a Kaiser provider, it is not an "[u]ninsured medical expense[]." RCW 26.18.170(18)(d). Thus, I respectfully dissent.

"'Uninsured medical expenses' includes premiums, copays, deductibles, along with other health care costs *not covered* by insurance." RCW 26.18.170(18)(d) (emphasis added). I would hold that while medical costs that an insurance company never promised to pay (such as premiums, copays, and deductibles) are "not covered," medical costs that an insurance company promised to pay for subject to an in-network limitation are "covered." RCW 26.18.170(18)(d). Thus, the latter are not "uninsured medical expenses" under RCW 26.18.170(18)(d).

Basic fairness supports this interpretation, as illustrated by this case. Victor M. Zandi (the father) provided insurance that would have covered the costs for T.Z.'s kidney stone removal as long as the removal was performed by a Kaiser provider (or Kaiser's prior approval was obtained). T.Z.'s kidney stone removal was provided by a non-Kaiser provider without Kaiser's prior approval, resulting in a large medical bill that could have been avoided. The majority's holding requires Victor to pay 100 percent of this large medical bill, even though Victor provided T.Z. with insurance that covered the kidney stone removal subject to the insurance plan's in-network limitation and even though Victor was not responsible for violating that in-network limitation.

Under the majority's holding, a parent with control over his or her child's medical care could boundlessly violate the insurance plan's in-network limitation with knowledge that the

46313-0-II

other parent would be forced to absorb the resulting costs. This is patently unfair. Furthermore, where the parent with control over the child's medical care has no responsibility for the costs of violating the insurance plan's in-network limitation, he or she has no incentive to avoid a violation.

Recognizing this, the trial court reasonably decided that because Deanna M. Zandi (the mother) was T.Z.'s primary residential parent, she was in a better position to control where T.Z. had her medical procedure and therefore should absorb 25 percent of the costs for the violation of the insurance contract's in-network limitation. Thus, I respectfully dissent. I would affirm the superior court.


J. Worswick

HAYS LAW OFFICE

September 22, 2015 - 2:08 PM

Transmittal Letter

Document Uploaded: 4-463130-Petition for Review.pdf

Case Name: Zandi v Zandi

Court of Appeals Case Number: 46313-0

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: ____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Diane C Hays - Email: jahayslaw@comcast.net

A copy of this document has been emailed to the following addresses:

dsalaw@cni.net