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SUPREME COURT

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COA No. 75438-6-I

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COURT OF APPEALS DIV. I  
STATE OF WASHINGTON  
2017 JUL -26 PM 12:18

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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IN RE: THE MARRIAGE OF  
D. BRUCE STOKSTAD,  
Appellant,

And

LUCY STOKSTAD,  
(aka Lucy Spier or Lucy Zellweger)  
Respondent.

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ON REVIEW FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

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PETITION FOR REVIEW

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**APPENDIX**

**Unpublished Decision by Court of Appeals  
dated June 5, 2017**

## **I. IDENTITY OF THE PETITIONER**

Bruce Stokstad, the appellant below is the custodial parent or receiving parent identified in the relevant Order of Child Support. He asks this court to accept review of the Court of Appeals decision.

## **II. COURT OF APPEALS DECISION**

Petitioner, Bruce Stokstad (hereafter referred to as Bruce), seeks review of the Court of Appeals Decision entered on June 5, 2017, affirming the trial court's order. The trial court granted a Motion Regarding Judgment Liens filed by Lucy Stokstad (hereafter referred to as Lucy), the obligor parent on February 5, 2016.

Amongst the significant relief granted, the trial court enforced a retroactive determination or Notice of Credit issued by the Division of Child Support (hereafter referred to as DCS) on January 23, 2015 to Lucy against her support arrears in the amount of \$16,225.00. That determination reversed a final decision or Notice of Credit issued three (3) years prior on February 6, 2012 which gave Lucy credit for only \$649.00. DCS brought no motion to vacate its February 6, 2012 decision, and Bruce had no notice of or opportunity to be heard prior to its February 6, 2012 decision or prior to a Conference Board Decision dated February 23, 2015 which the trial court found to be binding on Bruce as he did not appeal it within 30 days.

### III. INTRODUCTION<sup>1</sup>

When an adult child (a child age 18 or over) receives a lump sum benefit from the Social Security Administration based on the disability of an obligor parent, the Social Security Administration (hereafter referred to as SSA) requires the adult child to personally appear before the SSA to sign for and receive a check made out in the name of the adult child.

The SSA advises the adult child that no one but the adult child himself has an interest in those funds. Here, that is exactly what occurred in January of 2012. In our case, in addition to representations by the SSA, the Division of Child Support (hereafter referred to as DCS) assured the receiving parent in a written decision, in person, then in a follow up writing that 1) neither parent had an interest in the SSA payment of \$16,225.00 made directly to the adult child and 2) that the obligor parent would not receive a credit for that payment.

However, 3 years after its Final and binding decision, DCS decided it made an error. Then summarily, without giving notice of an intent to vacate its prior decision, and without notice or an opportunity to be heard, it gave the obligor parent a retroactive credit of \$16,225.00. Unfortunately, by then, the adult child had already spent the \$16,225.00 to meet college expenses not covered by the college support order.

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<sup>1</sup> All facts set forth in the Introduction are cited to the Clerk's Papers in either the Brief of Appellant dated November 28, 2016 or Reply Brief of Appellant dated March 14, 2017.

The receiving parent, Bruce Stokstad (hereafter referred to as Bruce), had no recourse to avoid harm if the retroactive credit was permitted. Bruce could not go back and retroactively seek a child support modification based on involuntary debt and expenses resulting from a waiver of the obligor's support obligation to him. Bruce could not avoid harm by requiring the adult child to reduce expenses due to a waiver of support arrears owed to him. And, he could not go back in time and ask the adult child to cooperate with turning the funds over to him so that he could reimburse himself for past child rearing expenses on which the obligor parent had defaulted.

A custodial parent, is entitled to count on the monthly sum certain ordered by the court to be paid to them by the obligor parent. The custodial parent is entitled to rely on the unambiguous actions and representations of the SSA when they are told that no one but the adult child has an interest in a lump sum benefit paid to an adult child. Finally, the custodial parent is entitled to count on a Final and binding decision by the Department of Child Support which determines that the obligor parent will not receive a credit against their arrears.

Here, the Superior Court erroneously found that Bruce had 30 days to appeal the findings of the Administrative Law Judge (that a Conference Board Decision is binding and that a litigant has 30 days to appeal that Conference Board decision) and since he failed to do so, he was bound by that ruling.



Based on its erroneous ruling that a Conference Board Decision is binding, the Superior Court permitted inclusion of a credit to Lucy for a payment of \$16,225.00 in its order to satisfy judgment liens, and it found Bruce's objection to that credit to lack merit.

Due to the Superior Court's erroneous ruling regarding the binding nature of a Conference Board Decision, it found Bruce transformed a simple Motion to pay off old judgments in which he would receive a considerable sum into major litigation. It accepted Lucy's summary conclusions about what judgments and / or accrued interest was owed, and ordered Bruce to pay her legal fees.

WAC 388-14A-6400(1) is crystal clear that a Conference Board is an informal proceeding. Bruce's objection to the credit did not lack merit and it is offensive and groundless for the Superior Court to expect Bruce to waive child support arrears of \$16,225.00 plus accrued interest simply because the other outstanding judgments Lucy was promising to pay were significant.

The Superior Court lost sight that it was not Bruce who turned this case into "major litigation". Had Lucy simply used her resources to timely pay her child support obligation, there would have been no outstanding judgments and neither party would have incurred litigation costs.

#### **IV. ISSUES PRESENTED FOR REVIEW**

1. Did DCS lack jurisdiction and/ or authority to issue a new decision and/ or retroactive credit on January 23, 2015, which vacated or modifying an earlier Final decision or Notice of Credit dated February 6,

2012, without securing an Order to Show Cause and without providing notice and an opportunity to be heard as required by WAC 388-14A-3700 and CR 60(b), and without a ruling on its Order to Show Cause to Vacate, and absent those due process procedures, is that January 23, 2015 decision void, as well as any order that flows from that void decision?

2. Should the Supreme Court determine whether a lump sum benefit payment made directly to an adult child in the name of the adult child by the SSA on the basis of the obligor parent's disability, be credited against the obligor parent's support arrears and if so, under what circumstances? To make that determination, the court should consider and determine the following:

a. Is a credit to the support arrears of an obligor parent for lump sum benefits paid directly by the SSA to an adult child (based on the obligor parents disability) pursuant to RCW 26.18.190(2) which are not received by the receiving or custodial parent the equivalent of a reimbursement of compensation which is prohibited by RCW 26.18.190(4)?

b. Does a credit to the support arrears of an obligor parent for lump sum benefits paid directly by the SSA to an adult child (based on the obligor parents disability) violate federal law and conflict with the policy and practice of SSA officers whereby they advise the adult child that they, and they alone, have an interest in the lump sum payment made directly to them?

c. Does a credit to the support arrears of an obligor parent for a lump sum benefit paid directly by the SSA to an adult child, particularly where there is undisputed evidence that the receiving parent does not receive the funds, amount to an impermissible retroactive modification of the Order of Child Support?

d. Is there any legitimate state interest or policy served by crediting the lump sum SSA payment made directly to an adult child to the support arrears of the disabled obligor parent, where the custodial parent has already advanced and incurred all financial costs to provide for the child's living expenses, health, and education with the court ordered contribution of the obligor parent?

e. If the court determines that an obligor parent may receive credit to outstanding support arrears for a lump sum benefit paid directly to an adult child by the SSA on the basis of the obligor parent's disability, should the court be required to harmonize RCW 26.18.190(2) and WAC 388-14A-4200(2) with RCW 26.23.050(6), RCW 74.20.101(2) and RCW

74.20.101(3), and the current Order of Child Support without making a finding on the record that

- 1) the rights of the residential parent entitled to receive the child support payment will not be prejudiced per RCW 74.20.101(2)(a) and
- 2) that per RCW 74.20.101(2)(b) the receiving parent received notice and an opportunity to be heard and that the obligor parent should receive a credit based on equitable principles?

f. If the court determines that an obligor parent may receive credit to outstanding support arrears for a lump sum benefit paid directly to an adult child by the SSA on the basis of the obligor parent's disability, before the court determines the credits to be applied in order to avoid violating federal law, is the obligor parent required to provide calculations and evidence to ensure SSA funds were not used for an obligation prior to the benefit period, in an amount in excess of any one benefit period, and that overpayments are not applied to future obligations?

3. Does the court have jurisdiction and/ or authority grant relief modifying and/ or vacate a money judgment where that relief has already been denied twice by the court, and the judgment was already extinguished by a prior garnishment four years prior? And prior to hearing that request is an order to show cause pursuant to CR 60 (e) required?

4. Can the court make a determination regarding sums owed and sums satisfied without calculations verifying that the obligor paid the mandatory post judgment interest, and that payments for child support are allocated first to current obligations, then to the oldest unexpired obligation and interest thereon as required by Washington law?

5. Can the court award legal fees to the obligor parent where they secured relief in the form of a credit for \$16,225.00 where the determination on which they relief was made in violation of Bruce's due process rights as set forth in the constitution, in violation of civil rules, and RCW 74.20.101(2)(b) which prohibits credit to an obligor parent for payments not made through the support registry unless there is first notice and an opportunity to be heard, and the court orders the credit to be applied on the basis of equitable principles.

## V. STATEMENT REGARDING DISPUTED DCS DETERMINATION<sup>2</sup>

In January of 2012, Woodrow, the parties' adult child, received a check written in his name and delivered directly to him in the amount of \$16,225.00. Simultaneously, Lucy Stokstad, (obligor parent hereafter referred to as Lucy) received her own lump sum disability award and of that, \$16,225.00 was garnished and deposited into the bank account for Bruce Stokstad (custodial receiving parent hereafter referred to as Bruce).

On February 6, 2012, the Division of Child Support issued a Notice advising that Lucy was given credit of only \$16,225.00. On February 13, 2012, Support Officer J. Jonson verified that no one but Woodrow had an interest in the funds paid to Woodrow directly by the SSA. Notwithstanding, DCS clarified that of the \$16,225.00 paid to Woodrow, Lucy would receive a credit of \$649.00, even though Bruce did not actually receive the sum of \$649.00.

The next day, on February 14, 2012, J. Jonson of DCS sent a Debt Calculation and a Case Payment History to Bruce. The Debt Calculation demonstrated the application of a \$16,225.00 credit to Lucy on February 6, 2012 for funds deposited to Bruce's bank account. Additionally, it verified a credit to Lucy of \$649.00 in July 2011 from the

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<sup>2</sup> Due to time limitations, citations to the Clerk's Papers and additional facts may be found in Bruce's Brief of Appellant dated November 28, 2016 and Reply Brief of Appellant dated March 14, 2017.

\$16,225.00 in SSA funds paid directly to Woodrow.

At page 2 of the Debt Calculation, J. Jonson made a handwritten note by the \$649.00 July 2011 credit "**from \$16,225.00**". At page 3 of the Debt Calculation, J. Jonson placed the hand written notation stating "**16,225 only 649 was credited as the rest was in a judgment period**".

## **VI. ARGUMENT WHY REVIEW SHOULD BE GRANTED**

Pursuant to RAP 13.4(b), review of the Court of Appeals decision should be accepted on three separate bases.

**First**, pursuant to RAP 13.4(b)(4), this petition involves an issue of substantial public interest that should be determined by the Supreme Court. Namely, the issue is whether a lump sum benefit payment made directly to an adult child in the name of an adult child by the Social Security Administration on the basis of an obligor parent's disability, can be credited against the obligor parent's support arrears.

Where a lump sum benefit payment is made to an adult child, the Social Security Administration has a policy of on ambiguously notifying the adult child that they and they alone have an interest in the benefit payment, and to ensure the adult child receives the payment, they require the adult child to appear in person to receive and sign receipt for the payment.

There is no Washington case that addresses this issue. Although trial court found that Fairchild [sic] applied, and the Court of Appeals

agreed that In Re Parentage of Fairbanks, 142 Wn. App. 950, 176 P. 3d 611(2008) found that a parent is entitled to child support credit for lump sum Social Security Disability benefits paid, and likewise, In Re Marriage of Briscoe, 134 Wn. 2d 344, 949 P. 2d 1388(1988). The court of appeals noted that Bruce pointed in nothing in the court's analysis to support his claim that Fairbanks does not involve an SSA payment to an adult child or for an amount in arrears.

However, that is not true. Bruce set forth the relevant case facts in a footnote at page 47 of his Brief of Appellant dated November 28, 2016 from which his assertion is easily deduced. The Fairbanks court noted that the father was current on his child support obligation and gave the father a retroactive credit for the lump sum payment, father received a credit for future child support on the basis of his payments made with non- benefits. Had future support been for the post secondary educational support for an adult child, the court would have said so.

Regardless, it is unreasonable to require Bruce to PROVE that the lump sum disability benefit payment was not for an adult child. The point is that the public, in particular a receiving parent, is entitled to clarification and determination by the Supreme Court on this issue. They are entitled to know whether they can rely on a representation by the Social Security Administration that no one but the adult child has an interest in the payment made directly to the adult child, or whether the receiving parent must live with uncertainty, not knowing whether there are

steps they must take to protect the right to child support contained in their Order of Child Support, and if so, what on earth those steps would be.

Presently Washington statutes present the opportunity for conflicting decisions and for a deprivation of property to a receiving parent if Washington statutes RCW 26.18.190(2) and WAC 388-14A-4200(2) are not harmonized with RCW 26.23.050(6), RCW 74.20.101(2) and RCW 74.20.101(3), and the mandatory language in all Orders of Child Support that prohibit a credit to a parent if the payment does not go through the Support Registry.

In our case, both the trial court and the court of appeals RCW 26.18.190 (2) mandates that the court offset from the parents child support obligation any Social Security disability payments to a child on that parent's behalf. It referred to WAC 388-14A-4200(2) which has language that mirrors that statute. However, both the trial court and the Court of Appeals were silent about the need to harmonize conflicting Washington statutes and Federal Law.

RCW 16.18.190(2) must be read in light of RCW 26.18.190(4)

RCW 26.18.190(4) states:

Under no circumstances shall the person who has the obligation to make the transfer payment have a right to reimbursement of any compensation paid under subsection (1), (2), or (3) of this section.

If the receiving parent does not receive one penny of a lump sum disability payment because the Social Security Administration made the

payment directly to the adult child and advised the adult child that only he and he alone had an interest in those funds, and the receiving parent does not receive one penny of that lump sum payment to the child, then the credit to the obligor parent against the obligor parents child support arrears is an indirect reimbursement of the compensation paid to the adult child. Here, since Lucy received a credit of \$16,225 against her support arrears, at Bruce's expense, she is enriched in the amount of \$16,226.00.

Federal law prohibits SSA funds to discharge Lucy's debt and makes payments directly to an adult child to ensure that the payment is used exclusively for the benefit of the adult child.

Every dependent child of an individual who is entitled to Social Security benefits shall be entitled to a child's insurance benefit, 20 CFR 404.350, 42 USC 402(d). Payments are made to a representative payee where a beneficiary is under the age of 18, 20 CFR 404.2010(2)(b). A representative must use the payments only for the benefit of the beneficiary, CFR 404.2035(a). Benefits are deemed to be used for the use and benefit of a beneficiary where the benefits are used for a beneficiaries current maintenance, CFR 404.2040(a).

A representative payee who misuses a beneficiaries benefits is responsible for paying back misused benefits, 20 CFR §404.2041(a). Where an application is made to receive a payment for the use and benefit of another, and having received such a payment, knowingly and willfully converts such a payment, or any part thereof, to use other than



for the use and benefit of such other person, is guilty of a felony, 42 U.S.C. §(a)(5), 42 U.S.C. §(a)(9).

Washington law is consistent with federal law. Washington law entitles Lucy to credit for SSDI dependency benefits paid on behalf of a child toward the satisfaction of her child support obligation **for that period for which benefits are paid (emphasis added)**. WAC 388-14A-4200 (2), RCW 26.18.190 (2), Parentage of Fairbanks, 142 Wn. App. 950, 176 P. 3d 611(2008).

Where there is a conflict between federal law and state policy, the state policy must give way under the Supremacy Clause, Snider v. Creasy, 728 F.2d 369 (6th Cir.1984). Preemption will be found when there is an actual conflict between federal and state law where (1) compliance with both the federal and state law is physically impossible, or (2) the state law is an "obstacle" to the "full purposes and objectives of Congress, Department of Labor & Indus. v. Brugh 135 Wn. App. 808, 147 P.3d 588 (2006).

Woodrow, received a lump sum payment directly from SSA after turning 18 years old. It's sole authorized use was for his **current** maintenance, meaning Woodrow's current food, shelter, clothing, medical care and personal comfort items, 20 CFR § 404.2040(a).

It is a violation of federal law for either Lucy or DCS to satisfy Lucy's debt for child support arrears and/ or accrued interest on those arrears with Woodrow's money. Payments may be used only for the

benefit of the beneficiary, during the benefit period. Unless Lucy actually made a payment during the benefit period, then she is not entitled to a retroactive credit. If a monthly benefit exceeded Lucy's monthly obligation for that period, she is also not entitled to any reimbursement. Overpayments are a gift so excess benefits may not be applied to future payments.

A credit to the support arrears of an obligor parent for a lump sum benefit paid directly by the SSA to an adult child, is an impermissible retroactive modification of the Order of Child Support.

The court entered an Order of Child Support determining each parent's obligation for the support of the child. If the court gives the obligor parent credit, where as here, the receiving parent never receives a penny but has already incurred the financial expenses of meeting his own expenses as well as the unpaid contributions of the obligor parent, a credit to the obligor parent denies the receiving parent of their right to the sum certain ordered in the Order of Child Support. That credit is an impermissible retroactive modification.

No legitimate state interest or policy served by crediting the lump sum SSA payment made directly to an adult child to the support arrears of the disabled obligor parent.

The Division One appellate court case , In Re Marriage of Hughes, 69 Wn. App. 778, 782 P.2d 555 (1993), which was cited in Lucy's own brief, Resp. Br. 13, surveyed and cited out-of-state case law in its footnote 12, at p.783.

The court should look to the rationale of Mask v. Mask, 95 N.M. 229, 620 P. 2d 883 (1980) and Andler v. Andler, 217 Kan. 538, 538 P. 2d 649 (1975) cited by the Washington court.

In Mask v. Mask<sup>3</sup>, 620 P. 2d 883 , 95 N.M. 229 (1980), arrears existed prior to the award of benefits and the Social Security payments also exceeded the obligor parents monthly child support obligation. Citing Andler v. Andler<sup>4</sup>, 217 Kan. 539, 538 P.2d 649, 654 (1975), the Mask court found that the obligor could receive a credit against his support obligation, but only up to the amount of that obligation (\$50.00), for each month after the child began receiving the benefits.

The Mask court stated,

“Federal regulations prohibit the custodial parent from recovering support arrears out of social security payments. This should apply equally to the non-custodial parent who seeks to satisfy his support obligation by way of social security payments made directly from the social security administration to the child. These funds are the child's and not the noncustodial parent's, and cannot be used to meet his obligations... “

In Andler, found that benefit amount paid in excess of a parents monthly support obligation are a gratuity to the children. The Mask court further cited to the Missouri case of McClaskey v. McClaskey<sup>5</sup>, 543 S.W.2d 832 (Mo. App. 1976), when ruling that it would allow only credits

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<sup>3</sup> The facts of Mask are set forth at are set forth in a footnote at pages 16 &17 of the Reply Brief of Appellant dated March 14, 2017.

<sup>4</sup> The facts of Andler are set forth in a footnote at pages 17 &18 of the Reply Brief of Appellant dated March 14, 2017.

<sup>5</sup> The facts of McClaskey are set forth in a footnote at page 18 of the Reply Brief of Appellant dated March 14, 2017.

against support payments falling due after the social security payments had begun and that amounts in excess of the court ordered amount were gratuitous.

When speaking of "carry-back credit" or credit for amounts that accrued prior to the payment of benefits, the Mask court cited McClaskey at 883-884 stating:

To grant such a "carry-back" credit would be violative of both federal law and the principles of equity.... To allow such credits would be to encourage fathers to put off making their support payments in the hope that some future collateral source would satisfy their arrearages.

In addition to its discussion regarding the violation of federal law, the Mask court additionally addressed equitable principles. It stated:

If we were to allow such credits, the defendant would receive a windfall, since delinquent support payments would be made with the funds of the social security administration and not with his own. If we disallow the credits, the daughter will receive the benefit of the extra payments since she will receive not only the support arrearages but also the monthly social security check. As between the two parties, we feel, as did the Missouri court in McClaskey, supra, 543 S.W., that "when the windfall comes, equitably, it should not inure to the defaulting husband's benefit, but to his bereft children."

The second reason equity requires that the credits not be allowed is that the child's need is current, and must be met monthly, not sometime in the future. Again, as stated in McClaskey, "a child's needs for food, clothing, lodging and other necessary expenses is current- today, this week, this month- and the expectation of a future payment does not meet these needs." Id. at 835.

In addition to the above courts, the Connecticut court has dealt squarely with the issue of credit for lump sum Social Security benefits received by an adult child after the age of 18.

In Tarbox v. Tarbox<sup>6</sup>, 853 A. 2d 614, 84 Conn. App. 403 (2004) the court ruled that the disabled obligor parent was not entitled to credit against arrears where a child receives a lump sum payment for back social security disability benefits once they have already turned 18. In the absence of a published Connecticut case, the Tarbox court looked to the Michigan case Jenerou v. Jenerou, 200 Mich.App. 265, 503 N.W.2d 744 (1993). It quoted Jenerou as stating:

"however, the defendant [was] entitled to no credit, because the benefits were not paid to plaintiff, but directly to the daughter, who by then had reached the age of majority." Jenerou supra, 200 Mich.App. at 267, 503 N.W.2d 744. "The child does not receive the benefits because the federal government has decided to assume the parent's obligation to support the child, but only because the child is determined to be eligible for the benefits under federal law." Jenerou, id., at 267-68, 503 N.W.2d 744.

The Tarbox court also appeared to deny credit for four SSDI payments paid directly to the child after the child had turned 18 but prior to finishing high school even though for the SSDI payments were for the current period.

In Jenerou v. Jenerou, 200 Mich.App. 265, 503 N.W.2d 744 (1993), the Michigan court acknowledged its obligation to credit a disabled parent for SSDI benefits paid to an obligee custodial parent for the benefit of a minor child. However, it denied the credit because the

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<sup>6</sup> In Tarbox, the parties divorced in 1995. The father was ordered to pay \$126.50 per week in child support until the children turned 18 or graduated from high school, whichever occurred later. The younger child turned 18 in October 2000, and finished high school in June 2001. In February 2001, the younger child received a lump sum payment

benefits were not paid to the obligee parent for a minor child, but paid directly to the daughter, who by then had reached the age of majority.

RCW 26.18.190(2) and WAC 388-14A-4200(2) must be harmonized with RCW 26.23.050(6), RCW 74.20.101(2) and RCW 74.20.101(3), and the current Order of Child Support,

RCW 26.23.050(6) prohibits a credit to the obligor parent without making a finding on the record that

- 1) the rights of the residential parent entitled to receive the child support payment will not be prejudiced per RCW 74.20.101(2)(a) and
- 2) that per RCW 74.20.101(2)(b) the receiving parent received notice and an opportunity to be heard and that the obligor parent should receive a credit based on equitable principles?

If the court determines that an obligor parent may receive credit to outstanding support arrears for a lump sum benefit paid directly to an adult child, the obligor parent must still be required to provide calculations and evidence to ensure SSA funds were not used for an obligation prior to the benefit period, in an amount in excess of any one benefit period, and that overpayments are not applied to future obligations.

Here, Lucy provided a brief conclusory summary of what judgments she believed to be outstanding and what total credit she was entitled to receive. She provide no information to demonstrate that the credits she claimed complied with federal law. For example, she did not demonstrate that she only claimed credit for an obligation that accrued in a specific benefit period, that any potential overpayments which should have been deemed a gift were not applied as a credit to a future obligation, that she did not use the child's funds to satisfy accrued

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of \$7,328.00 for benefits for the period from March 2000 through January 2001.

interest.

SECONDLY, pursuant to RAP 13.4(b)(2) review should be accepted because this court of appeals decision is in conflict with another decision of the Court of Appeals. In the unpublished Court of Appeals decision in In Re Marriage of McReynolds, 67955-4-I dated July 8, 2013 which has no precedential value, a different 3 judge panel of the Division 1 Court of Appeals found a Conference Board Decision to be binding and held that a litigant's failure to appeal the Board Decision to the Superior Court within 30 days is fatal to a party's challenge.

In our case, in its unpublished June 5, 2017 opinion at page 2 foot note 3, the Court of Appeals, Div. 1 correctly noted:

A conference board is an "informal review of case actions... related to a child support case." WAC 388-14A-6400(1). A conference board is "not a formal hearing under the Administrative Procedure Act, RCW 34.05," and "does not replace any formal hearing right created by chapters WAC 388-14A, or by chapters RCW 26.23, RCW 74.20 or 74.20 a RCW." WAC 388-14A-6400(4), WAC 388-14A-6400(5).

A no doubt, the Administrative Law Judge and the trial court in our case relied on the unpublished McReynolds decision for the determination that Bruce was bound by the conference board decision for failure to appeal it within 30 days. Although the applicable WAC's are crystal clear, the WAC's are voluminous, dense, and apparently can be

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Thereafter the child received a monthly check for \$685.00 per month until June 2001.

misunderstood by DCS and the trial courts.

The public is entitled to a clear and unambiguous ruling regarding the non-binding and non-reviewable nature of a Conference Board Decision in order to save all parties from unnecessary litigation as resulted in our case.

THIRD, review should be accepted because the action by division of child support to re-issue a new determination and Notice of Credit on January 23, 2015, without seeking an order to show cause as required by CR 60 (e), and by making a decision to credit the obligor parent Lucy for payments not made through the support registry without 1<sup>st</sup> providing notice and opportunity to be heard, and without a court order determining that the credit could be applied to the obligor parent on the basis of equitable principles as required by RCW 74.2 0.101 (2)(b) was a violation of Bruce's constitutional right to due process.

Likewise clarification of this division of child support procedure involves in issue of substantial public interest that should be determined by the Supreme Court. Bruce was deprived of his property, that is \$16,225 to which he was entitled pursuant to the court's order of child support. Future litigants should not suffer the same harm.

FOURTH, the trial court's decision to essentially vacate December 18, 2009 judgment under #09-9-29976-1 for \$4200 is in conflict with the Washington Supreme Court case of McDaniels v. Carlson, 108 Wn. 2d 299, 738 P. 2d 254 (1987), which bars relitigation of the same issue that




was the basis of a finding or verdict in an action by the same parties in the same or different cause of action. The trial court's decision here is particularly egregious as the judgment was already extinguished through a garnishment action dated October 17, 2012.

#### CONCLUSION

Due to limitations on space, Bruce asks that the court review all issues argued before the trial court and appellate court, including the reasonableness of an legal fee award to Lucy and the failure to award a legal fee award to Bruce where Lucy sought relief based on a Conference Board Decision that had no binding value. Lucy cited no legal authority for the relief she sought and, in fact, sought to vacate judgments without first securing an order to show cause. Although the appellate court found Bruce made "disjointed" arguments, Lucy made NO legal arguments. She simply maintained she was entitled to a credit of \$16,225.00 because the Conference Board hearing officer, and the Administrative Law Judge said so.

The court should accept this case for review and grant all relief sought by Bruce Stokstad in his briefs submitted to the Appellate Court. Respectfully submitted this 5th day of July, 2017.

Law Office of F. Andrekita Silva

  
\_\_\_\_\_  
Andrekita Silva, WSBA No. 17314  
Attorney for Petitioner/Appellant

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that the following is true and correct:

That on July 5, 2017, I arranged for service of the foregoing Brief of Appellant to the court and to the parties to this action as set forth below. The parties have mutually agreed to alternate electronic service.

Office of Clerk  
Court of Appeals, Division I  
600 University Street  
Seattle, Washington 98101                     Messenger

Marya Santor  
19125 Northcreek Parkway, Suite 120  
Bothell, Washington 98011                     Email

DATED at Seattle, Washington this 5th day of July, 2017.

Law Office of F. Andrekita Silva

ss// andrekita silva  
\_\_\_\_\_  
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# APPENDIX

UNPUBLISHED DECISION BY THE COURT  
OF APPEALS DATED JUNE 5, 2017

RICHARD D. JOHNSON,  
Court Administrator/Clerk

*The Court of Appeals  
of the  
State of Washington  
Seattle*

DIVISION I  
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June 5, 2017

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CASE #: 75438-6-1

D. Bruce Stokstad, Appellant v. Lucky Stokstad  
King County, Cause No. 94-3-01842-0 SEA

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal which states in part:

"Affirmed."

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days. The Supreme Court has determined that a filing fee of \$200 is required.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived. Should counsel desire the opinion to be published by the Reporter of Decisions, a motion to publish should be served and filed within 20 days of the date of filing the opinion, as provided by RAP 12.3 (e).

Sincerely,



Richard D. Johnson  
Court Administrator/Clerk

lls

Enclosure

c: The Honorable Jean Rietschel

2017 JUN -5 AM 9:46

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

In the Matter of the Marriage of )  
LUCY STOKSTAD (now known as Lucy )  
Spier or Lucy Zellweger), )  
Respondent, )  
and )  
D. BRUCE STOKSTAD, )  
Appellant. )

No. 75438-6-1

UNPUBLISHED OPINION

FILED: June 5, 2017

SCHINDLER, J. — Lucy Stokstad filed a motion to determine the amount of the outstanding judgment liens so that she could sell her property and satisfy the amount owed. D. Bruce Stokstad objected, arguing the court should also resolve other outstanding matters. D. Bruce Stokstad appeals the denial of a motion for a continuance, calculation of the amount of the liens, and the award of attorney fees to Lucy Stokstad. Finding no abuse of discretion or reversible error, we affirm.

FACTS

D. Bruce Stokstad and Lucy Stokstad are the parents of W.S. The trial court entered the initial child support order in 1998. During the ensuing and lengthy litigation, the trial court entered several judgments against Lucy<sup>1</sup> for unpaid obligations, including

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<sup>1</sup> We refer to D. Bruce Stokstad and Lucy Stokstad by their first names for purposes of clarity.

back child support, medical support, and attorney fees. In 2009, W.S. began living full time with Bruce. On July 15 and August 19, 2011, the court entered judgments and orders addressing child support and postsecondary educational support.

W.S. turned 18 years old in January 2011. In January 2012, the Social Security Administration (SSA) made a lump sum payment of \$16,225.00 from Lucy's disability benefits directly to W.S. In February 2012, the Washington State Department of Social and Health Services Division of Child Support (DCS) garnished \$16,412.50 from Lucy's Social Security disability benefits and deposited the money into Bruce's bank account.

On February 6, 2012, DCS issued a "Notice of Credit" to Bruce indicating that the full amount of the Social Security payment to W.S. had been credited "to reduce the noncustodial parent's past-due support debt." But the initial calculations of DCS credited Lucy a total of only \$649.

DCS notified Bruce in January 2015 that it was crediting Lucy with the full amount of \$16,225 for the payment to W.S.<sup>2</sup> Bruce submitted an objection, claiming DCS applied the credit incorrectly.

On February 17, 2015, the DCS Conference Board (Conference Board)<sup>3</sup> rejected Bruce's objection and affirmed the credit under Washington statutes, the Washington Administrative Code (WAC), and DCS policy. The Conference Board chair found no exceptional circumstances justified reducing the credit and noted that if Bruce wished "to pursue the issue further, he'll need to do so in court." DCS determined the disability

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<sup>2</sup> See RCW 26.18.190(2) (requiring Social Security disability benefits paid to child on parent's behalf be credited to support obligation); see also WAC 388-14A-4200(2).

<sup>3</sup> A conference board is an "informal review of case actions and of the circumstances of the parties and children related to a child support case." WAC 388-14A-6400(1). A conference board is "not a formal hearing under the Administrative Procedure Act, chapter 34.05 RCW," and "does not replace any formal hearing right created by chapters 388-14A WAC, or by chapters 26.23, 74.20 or 74.20A RCW." WAC 388-14A-6400(4), (5).

No. 75438-6-1/3

benefits would be applied to Lucy's support obligations for the period of June 2009 to June 2011.

In a separate proceeding, Bruce and Lucy participated in an administrative hearing to determine Lucy's current obligation for postsecondary support. On June 30, 2015, the administrative law judge (ALJ) issued the final order. The ALJ noted that Bruce continued to dispute the DCS application of credit for the SSA payment to W.S., but ruled that the ALJ had no authority to decide the issue. Neither party sought judicial review of the decision.

On February 5, 2016, Lucy filed a "Motion Regarding Judgment Liens" to determine the amount owed to satisfy several judgment liens recorded on her residential property. Lucy stated she was in the process of selling her house "in large part to satisfy these judgments and her post-secondary support obligation." In her motion and supporting documents, Lucy identified the relevant judgments, any prior credits or payments, and her calculation of the outstanding amounts due.

On February 12, the attorney for Bruce filed a "Counter Motion to Continue Hearing," asking the court to continue the scheduled February 19 hearing to March 1. Counsel asked the court to decide all outstanding support and enforcement issues at the same time as the residential liens, including anticipated motions for enforcement of Lucy's outstanding obligations for postsecondary support and medical support and for an additional award of attorney fees. Counsel also asked the court to invalidate the DCS credit for the SSA payment to W.S. On February 16, Bruce filed a declaration "in partial response" to Lucy's motion.

In reply, Lucy submitted the declaration of her realtor Gerry Eagle. Eagle stated

No. 75438-6-1/4

Lucy had accepted the buyers' cash offer on January 25, 2016. Eagle explained that the buyers agreed to delay the closing from February 12 to March 1 but did not want any further delay. Eagle believed any further delay in resolving the outstanding liens would jeopardize the sale.

On February 19, a family law commissioner denied the motion for a continuance and entered an "Order Regarding Judgment Liens." The order addresses the judgment liens and concludes the total amount owed to satisfy all of the outstanding liens on the property was approximately \$206,500.

On February 25, Lucy filed a motion to clarify the February 19 order and for an expedited hearing. Citing the March 1 closing date for sale of the property, Lucy asserted Bruce failed to cooperate in signing the necessary documents to permit the sale to move forward.

On February 26, a commissioner entered an order directing the sale of the property and directing the court clerk to enter the satisfactions of judgment for the liens so that the sale could proceed. The order states that after the sale, Bruce and Lucy would each receive \$50,000 from escrow and the remaining proceeds, less costs of the sale, would be transferred to the registry of the court. The order noted that entry of the satisfactions of judgment was "purely for purposes of enabling the sale of the real property" and without prejudice to Bruce "to seek any relief available to him under the law."

On March 30, the commissioner denied Bruce's motion for reconsideration. Bruce filed a motion for revision.

On June 2, 2016, the superior court denied the motion to revise and ordered



disbursement of the funds in the court registry to satisfy the outstanding judgment liens.

The court denied Bruce's motion for reconsideration and for additional findings and awarded Lucy attorney fees.

## ANALYSIS

### Standard of Review

When a party moves for revision of a commissioner's ruling, the superior court reviews the decision de novo, based on the evidence and issues presented to the commissioner. See RCW 26.12.215; RCW 2.24.050; In re Marriage of Moody, 137 Wn.2d 979, 992-93, 976 P.2d 1240 (1999). On appeal from a superior court order denying revision, we review the superior court decision, not the commissioner decision. State v. Ramer, 151 Wn.2d 106, 113, 86 P.3d 132 (2004).

### Continuance

Bruce contends the superior court erred in finding that the commissioner properly denied his request for a two-week continuance. Bruce argues he needed a continuance to properly prepare a response to Lucy's motion and to permit all outstanding issues to be resolved at the same time. Bruce maintains that as a result of the denial, the commissioner and superior court committed multiple legal errors.

We review the decision to deny a continuance for a manifest abuse of discretion. Harris v. Drake, 116 Wn. App. 261, 287, 65 P.3d 350 (2003). The trial court abuses its discretion only if the decision is manifestly unreasonable or based on untenable grounds. Hizey v. Carpenter, 119 Wn.2d 251, 268, 830 P.2d 646 (1992). The court's decision on a motion to continue necessarily rests on the specific facts of the case, and the court may consider a variety of factors, including diligence, materiality, due process,

and a need for an orderly procedure. In re Dependency of V.R.R., 134 Wn. App. 573, 581, 141 P.3d 85 (2006).

Lucy's motion and request for relief were limited to resolution of the amount owed to satisfy the judgment liens on her property so that the imminent sale of her house could proceed. Bruce was well aware in advance that Lucy planned to sell the property, a transaction that was clearly to his benefit. Bruce's primary legal challenge to Lucy's motion was that DCS erred in crediting the SSA benefits paid to W.S. But Bruce raised that same issue at least one year earlier in conjunction with the Conference Board decision and the administrative hearing. Nothing in the record suggests Bruce needed more time to respond to the specific issues raised in Lucy's motion.

Rather, Bruce sought the continuance primarily to expand the scope of the hearing to encompass all outstanding issues, including a determination of Lucy's other unpaid obligations. A cursory review of the parties' litigation history suggests that Bruce was proposing a significant expansion of the proceeding that would likely result in a lengthy delay. Any further delay in the resolution of Lucy's motion could reasonably have jeopardized the sale of the house.

Under the circumstances, the court's decision to deny the continuance and limit the current proceeding to resolution of Lucy's motion was reasonable and well within its discretion.

#### Credit for Social Security Disability Benefits

Bruce contends the superior court erred in crediting \$16,225 to Lucy's judgment lien obligations for the SSA benefits paid to W.S. in January 2012. Bruce argues the DCS application of the credit violated state and federal law. We disagree.

As noted in the 2015 DCS Conference Board decision, RCW 26.18.190(2) mandates that the court offset from a parent's child support obligation any Social Security disability payments to a child on that parent's behalf.

**When the social security administration pays social security disability dependency benefits, retirement benefits, or survivors insurance benefits on behalf of or on account of the child or children of a person with disabilities, a retired person, or a deceased person, the amount of benefits paid for the child or children shall be treated for all purposes as if the person with disabilities, the retired person, or the deceased person paid the benefits toward the satisfaction of that person's child support obligation for that period for which benefits are paid.**

RCW 26.18.190(2).<sup>4</sup> DCS regulations mirror the statute:

**When the Social Security administration pays Social Security disability dependency benefits, retirement benefits, or survivors insurance benefits on behalf of or on account of the child or children of an NCP [(noncustodial parent)] who is a disabled person, a retired person, or a deceased person, DCS treats the amount of benefits paid for the child or children as if the NCP paid the benefits toward the NCP's child support obligation for the period for which benefits are paid.**

WAC 388-14A-4200(2).

The superior court also relied on In re Parentage of Fairbanks, 142 Wn. App. 950, 176 P.3d 611 (2008), that interpreted RCW 26.18.190(2).

**RCW 26.18.190 addresses the effect of benefits paid by the Social Security Administration on behalf of a child. RCW 26.18.190(2) specifically provides that when Social Security benefit payments are made on behalf of the child of a disabled person, that amount is treated for all purposes as if the disabled person had paid the benefits toward the satisfaction of that person's child support obligation for the period for which the benefits were paid.**

Fairbanks, 142 Wn. App. at 956 (father entitled to child support credit for lump sum Social Security disability payment to child for father's disability); see also In re Marriage of Briscoe, 134 Wn.2d 344, 347-48, 949 P.2d 1388 (1998) ("[RCW 26.18.190(2)] is

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<sup>4</sup> Emphasis added.

unambiguous: Disability benefits paid directly to the children are in partial satisfaction of the disabled parent's support obligation.").

Under unambiguous Washington law, the superior court did not err in offsetting Lucy's support obligation with the SSA payment to W.S.

Bruce asserts that Fairbanks is distinguishable because it does not involve an SSA payment to an adult child or for an amount in arrears. But he points to nothing in the court's analysis to support this claim. Bruce's reliance on out-of-state authority is equally unpersuasive. None of the cases he cites address provisions analogous to Washington statutes and regulations.

Bruce further contends the 2015 DCS application of credit was void and constituted an improper vacation of the 2012 Notice of Credit, application of the credit violated various federal regulations, and the Conference Board procedure violated his due process rights. Bruce also maintains that the doctrines of collateral estoppel, res judicata, and laches preclude application of the credit because Lucy failed to object to the 2012 Notice of Credit.

But Bruce offers only a litany of conclusory and disjointed legal arguments to support these theories. For several issues, Bruce has failed to provide a sufficient record to permit meaningful review. Accordingly, we decline to consider these contentions. See Saunders v. Lloyd's of London, 113 Wn.2d 330, 345, 779 P.2d 249 (1989) (appellate court will decline to consider issues unsupported by cogent legal argument and citation to relevant authority).

In a related contention, Bruce claims the superior court erred when it "impliedly" found that he was bound by the Conference Board decision when he failed to seek

review of the subsequent ALJ decision. Because Bruce fails to demonstrate that the superior court erred in applying the credit based on Washington law, we need not address any alternative bases for the court's decision.

#### 2011 Judgment Lien

One of the liens on Lucy's property was for a 2011 judgment under cause number 11-9-22746-0, totaling \$155,110.74, including \$127,309.63 in attorney fees. The judgment amount included awards for all attorney fees to date, back child support and interest for May 2009 through June 2011, and special expenses and interest for August 2007 through June 2011.

Lucy argued, and the court agreed, that the attorney fee award in the 2011 judgment encompassed two earlier judgments for identical services in the amount of \$2,114.75 (2010) and \$4,200.00 (2009). Bruce maintains the court erred in finding that the 2011 judgment "superseded" the two earlier judgments.

But Bruce does not dispute that the 2011 judgment included an attorney fee award for the identical services included in the 2009 and 2010 judgments. Bruce makes no showing that he was entitled to be paid twice for the same services. The court did not err in removing the two earlier judgment liens.

#### Credit for Garnished Funds

Bruce contends the superior court erred in crediting \$5,546.23 as a partial satisfaction of the 2011 judgment. Bruce garnished that amount in 2012 for the 2009 attorney fee judgment of \$4,200.00 plus interest.

As set forth above, the 2011 judgment included the amount awarded in the 2009 attorney fee judgment. Bruce fails to demonstrate how the court erred in applying the

garnished amount toward satisfying the 2011 judgment.

Attorney Fee Award

Bruce contends the court erred in awarding Lucy \$6,658.18 in attorney fees for his bad faith and intransigence during the motion for revision and motion for reconsideration. Bruce argues the court should have awarded him attorney fees based on Lucy's intransigence.

The court "may consider whether additional legal fees were caused by one party's intransigence and award attorney fees on that basis." In re Marriage of Greenlee, 65 Wn. App. 703, 708, 829 P.2d 1120 (1992). Intransigence may involve " 'foot-dragging' and 'obstruction,' " the filing of unnecessary or frivolous motions, a refusal to cooperate with the opposing party, and any other conduct that makes the proceeding unduly difficult or costly. Greenlee, 65 Wn. App. at 708 (quoting Eide v. Eide, 1 Wn. App. 440, 445, 462 P.2d 562 (1969)).

The court found, among other things, that during the course of Bruce's motion for revision, counsel refused to cooperate in resolving the relatively limited issues related to the judgment liens; submitted lengthy pleadings and numerous additional documents and materials, some of which made contradictory arguments; raised new issues; and repeatedly attempted to expand the hearing beyond the scope of Lucy's motion. As the court aptly commented, counsel's actions permeated the proceeding—"On a global level, [Bruce's attorney] has transformed a simple Motion to pay off old judgments in which [Bruce] would receive a considerable sum into major litigation." Substantial evidence supports the court's findings. The court did not abuse its discretion in awarding attorney fees for intransigence.

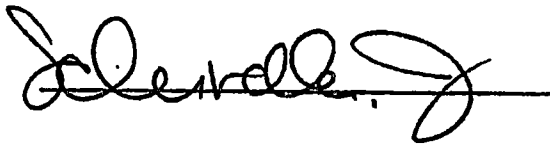
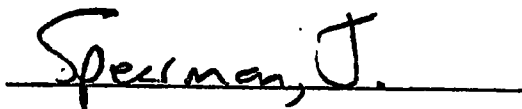
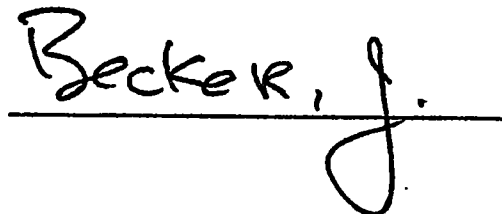
Bruce claims the court's calculations erroneously failed to include the appropriate interest for several items and failed to demonstrate that the credit was allocated to unpaid obligations in the proper order. These claims are too conclusory to address. Moreover, the current proceeding addressed only the payments necessary to satisfy the liens so that the sale of the property could proceed. As Lucy has acknowledged, Bruce is free to pursue any other outstanding obligations, including unpaid interest, at a future hearing. Bruce has failed to demonstrate that the court's resolution of the judgment liens was either unlawful or inequitable.

Lucy contends the superior court erred in considering documents that Bruce submitted for the first time in support of the motion for revision and motion for reconsideration. But the court expressly ruled it would consider the documents. And because consideration of the documents does not establish any reversible error, we do not address this issue further.

Both parties have requested attorney fees on appeal for intransigence. Both requests are denied.

Affirmed.

WE CONCUR:

A handwritten signature in black ink, appearing to be "DeVore", written over a horizontal line.A handwritten signature in black ink, appearing to be "Sperman, J.", written over a horizontal line.A handwritten signature in black ink, appearing to be "Becker, J.", written over a horizontal line.