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No. 66277-5-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

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COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

In re the Marriage of:

TAMMY J. TRIPLETT, Petitioner,

v.

STEPHANIE L. CASE, Respondent.

RESPONDING BRIEF OF TAMMY J. TRIPLETT

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I. INTRODUCTION

Stephanie Case, Respondent¹ filed a Motion for Contempt against her ex-spouse, Tammy J. Triplett, Petitioner, regarding the parties' Parenting Plan in the superior court that was denied. Simultaneously, a hearing was held on October 19, 2010 on Ms. Triplett's Motion to Adjust Child Support [herein, "Motion to Adjust"], Motion to Amend Order on Civil Motion, Dated 1-28-2005 [herein, "Motion to Amend"], and Motion to Shorten Time were granted. Ms. Case appealed from these decisions, and further requested that the court reverse the effect of orders entered in years past and reverse the dismissal of a separate civil action, from which no timely appeal was taken.

Ms. Triplett requests that the appeal be denied and that she be awarded attorney's fees and costs for defending this frivolous appeal.

II. ABSENCE OF ERROR

No errors were made by the trial court. This appeal is frivolous, should be denied, and fees should be awarded to Ms. Triplett.

¹Respondent is the appellant, Stephanie Case. Her brief and response erroneously label her as the Petitioner. She is not.

III. STATEMENT OF THE CASE

The marriage² of Stephanie Case, Respondent/appellant, and Tammy Triplett, Petitioner, was dissolved on February 28, 2000 and a Parenting Plan was entered regarding their two children. The primary residential parent is Ms. Triplett. On January 28, 2005, superior court orders were entered limiting Ms. Case's time with the children and ordering mediation. No appeal was taken from these orders.

Various motions have been filed by Ms. Case since the dissolution, and various orders have been entered. In 2008, Ms. Case sought to vacate the Decree of Dissolution and orders entered on 12/18/2002, 6/10/2004, 3/23/2005, and 6/6/2007. Resp. Ex. 2, p. 1. When this was denied by the court commissioner on December 5, 2008, the court found Ms. Case filed her motion in bad faith and awarded CR 11 sanctions. This was upheld on revision on January 27, 2009, and no appeal was taken. Resp. Ex. 2, p. 3-6. Ms. Case seeks reversal of those decisions in this appeal.

Ms. Case's continued frivolous filings ultimately resulted in the entry of a court order, by Judge George Mattson on May 26, 2009, limiting Ms. Case's access to court. CP 212.

²At the time of marriage, Ms. Case was the father/husband.

Ms. Case's time with the parties' son, who is now 16, dwindled to nothing after the son was hospitalized following a nervous breakdown in June 2009. Ms. Case initially agreed to this lack of contact. CP 233, p. 398 - 401. Subsequently, Ms. Case became dissatisfied with this arrangement and filed a Motion for Contempt alleging violations of the Parenting Plan and seeking reimbursement of certain day care expenses overpayments. CP 214, p. 136 - 137. Thereafter, Ms. Triplett filed a Motion to Adjust Child Support.

On October 19, 2010, a hearing was held on Ms. Case's Order to Show Cause re: Contempt regarding the Parenting Plan, her motion therein to obtain credit for day care expense overpayments, and on Ms. Triplett's Motion to Adjust Child Support.

Responding to the contempt request, Ms. Triplett filed a Motion to Amend Order on Civil Motion, dated 1-28-2005, which was also heard on October 19, 2010, after the court granted Ms. Triplett's Motion for Order Shortening Time to hear this motion. CP 231 & 232.

In large part relying on the report of Dr. Jack Reiter, the psychiatrist for the parties' son (CP 233, p. 398 - 401), the court found that Ms. Case's lack of residential time with her son was not a contemptuous violation of the Parenting Plan by Ms. Triplett (CP 235), denied Ms. Case's Motion for Contempt, and further ordered that the January 28, 2005 Order was modified

to allow the son to choose whether to have contact with Ms. Case. CP 238.

On October 19, 2010, the court entered an order giving Ms. Case credit for overpayment of day care expenses. CP 240.

The parties thereafter supplied the court with its requested additional information regarding the child support issues, and the court issued its Order of Child Support on Ms. Triplett's Motion for Adjustment on November 10, 2010, from which no appeal was taken.

In a separate action, Ms. Case filed a Complaint for Damages on October 5, 2010 against Ms. Triplett, alleging:

“misrepresentation/misrepresentation of intention — destruction of the parent-child relationship — claim of outrage & intentional interference — intentional and/or negligent infliction of emotional stress”,

King County Superior Court Cause No. 10-2-35077-2 KNT. This complaint was dismissed on November 19, 2010. No appeal was taken from this dismissal. Resp. Ex. 11, p. 14 - 15. Yet, Ms. Case pleads with this court to reverse this dismissal in her brief.

Ms. Case requests attorney's fees be awarded to her in this appeal based upon need and ability to pay, yet provides no evidence of the parties' financial circumstances in the record on appeal.

Ms. Triplett requests that attorney's fees be awarded to her in this appeal because the appeal is frivolous.

IV. ARGUMENT

The law of this case is the original Parenting Plan as modified by the 2005 court order. No appeal was taken from either of these orders. The court properly determined that the child's recent lack of contact with Ms. Case was not the result of any contemptuous violation of these orders by Ms. Triplett, properly refused to find Ms. Triplett in contempt of court, and properly clarified that future contact between the child and Ms. Case to which the child does not agree will not be a contemptuous violation of the existing orders.

It is difficult, reading Ms. Case's brief, to ascertain the specific actions of the trial court she is requesting be reversed. This brief first addresses her 10 assignments of error ("A of E" herein), then further elaborates on specific issues.

A. The court properly considered the January 28, 2005 order, which reduced Ms. Case's residential time and from which no appeal was taken, to be part of the law of this case. A of E 1-4

An appeal must be timely before the Court of Appeals may accept it.

RAP 6.1.³ To be timely, an appeal must be taken within 30 days of the trial

³RAP 6.1. APPEAL AS A MATTER OF RIGHT

"The appellate court "accepts review" of a trial court decision upon the timely filing in the trial court of a notice of appeal from a decision which is reviewable as a matter of right."

court's order. RAP 5.2.⁴ Ms. Case's appeal from the 2005 orders is thus not timely and should be dismissed, as should any argument that the order itself, and the court's continued observance of the order, was not proper.

B. The court properly considered all of the arguments and evidence presented by Ms. Case. Nothing was excluded from the court's consideration. A of E 5

A review of the transcript shows that the court considered all of Ms. Case's submissions relating to her September 7, 2010 Motion for Contempt. No evidence submitted by Ms. Case was stricken. No error occurred.

C. The court properly considered but disagreed with Ms. Case's allegations of custodial interference. A of E 6

Due to the absence of Ms. Triplett's bad faith or intentional misconduct, the court properly determined contempt is not an appropriate remedy for Ms. Case's complaints.

The limited issue raised by Ms. Case's motion was whether her lack of contact with her son was a result of Ms. Triplett's contemptuous violation of the Parenting Plan and 2005 order. While Ms. Case alleged in her declarations that Ms. Triplett had caused custodial interference, allegations

⁴RAP 5.2. TIME ALLOWED TO FILE NOTICE

“(a) Notice of Appeal. Except as provided in rules 3.2(e) and 5.2(d) and (f), a notice of appeal must be filed in the trial court within the longer of (1) 30 days after the entry of the decision of the trial court that the party filing the notice wants reviewed, ...”

denied by Ms. Triplett, the court was well within its discretion based on the evidence to find that Ms. Triplett acted with good faith and with reason, and thus properly denied the request for contempt.

Parenting plan decisions of a trial court are reviewed for abuse of discretion. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46, 940 P.2d 1362 (1997); *In re Marriage of Kovacs*, 121 Wn.2d 795, 801, 854 P.2d 629 (1993). Abuse of discretion is also the standard for review of threshold determinations for parenting plan modifications. *In re Parentage of Jannot*, 149 Wn.2d 123, 65 P.3d 664 (2003); *In re Marriage of Maughan*, 113 Wn. App. 301, 53 P.3d 535 (2002).

A trial court's decision in a contempt proceeding is reviewed for an abuse of discretion. *In re Marriage of James*, 79 Wash.App. 436, 440, 903 P.2d 470 (1995). A court abuses its discretion by exercising it on untenable grounds or for untenable reasons. *In re Marriage of Williams*, 156 Wn.App. 22, 232 P.3d 573 (2010).

Similarly, a trial court's decision to modify a parenting plan is reviewed for abuse of discretion. *In re Marriage of Hansen*, 81 Wn.App. 494, 498, 914 P.2d 799 (1996). The court's reasons must be untenable to be reversed. *In re Marriage of McDole*, 122 Wn.2d 604, 610, 859 P.2d 1239 (1993).

“A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; [and] it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.”

In re Marriage of Fiorito, 112 Wn.App. 657, 664, 50 P.3d 298 (2002).

The psychiatrist's report provided the court with factual evidence that supports its decision to restrict Ms. Case's contact with his son. The court's decision was not untenable and is not an abuse of discretion. No error occurred. Abuse of discretion occurs if the trial court's decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *In re Marriage of Thomas*, 63 Wn. App. 658, 660, 821 P.2d 1227 (1991); *In re Marriage of James*, 79 Wash.App. 436, 440, 903 P.2d 470 (1995); *In re Marriage of Williams*, 156 Wn. App. 22, 28, 232 P.3d 573 (2010).

Appellate courts do not make credibility determinations or weigh evidence. *In re Marriage of Meredith*, 148 Wn. App.887, 201 P.3d 1056 (2009); *Morse v. Antonellis*, 149 Wn.2d 572, 574, 70 P.3d 125 (2003); *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879-80, 73 P.3d 369 (2003).

Abuse of discretion is also the standard of review for the trial court's contempt decisions. See *In re Marriage of James, Id.*, *In re Marriage of Williams, Id.*, in which the court stated:

“A parent seeking a contempt order to compel another parent to comply with a parenting plan must establish the contemnor's bad faith by a preponderance of the evidence. *James*, 79 Wash.App. at 442, 903 P.2d 470. In a contempt case the trial court balances competing documentary evidence, resolves conflicts, weighs credibility, and ultimately makes determinations regarding bad faith. *Rideout*, 150 Wash.2d at 350-51, 77 P.3d 1174. We review the court's findings to determine whether they were supported by substantial evidence in the record. *Id.* at 352, 77 P.3d 1174.” *In re Marriage of Williams, Id.*, at p. 28.

A specific finding of bad faith or intentional misconduct is required for a contempt finding. A parent with a reasonable excuse for noncompliance is not in contempt of court. See *In re Marriage of Rideout*, 150 Wn.2d 337, 352, 77 P.3d 1174 (2003).

A trial court's decision in a contempt proceeding is reviewed for an abuse of discretion. *In re Marriage of James*, 79 Wash.App. 436, 440, 903 P.2d 470 (1995). A court abuses its discretion by exercising it on untenable grounds or for untenable reasons. *In re Marriage of Williams*, 156 Wn.App. 22, 232 P.3d 573 (2010).

The psychiatrist's report provided the court with factual evidence that supports its decision to restrict Ms. Case's contact with her son. The court's decision was not untenable and is not an abuse of discretion. No error occurred.

Here, the record substantially supports the trial court's denial of contempt. Ms. Triplett had a reasonable excuse for not forcing her son to spend time with Ms. Case. The trial court relied heavily on the report of Dr. Jack Reiter, CP 233, p. 398-401. The child had an emotional, violent breakdown at school, expressing homicidal thoughts, for which he was expelled from school and subsequently hospitalized. Since then, his treatment has been both given and supervised by Dr. Reiter. The trial court found that:

“[The child] is doing somewhat better, that he is starting to do better in school, that he is starting emotionally to stabilize ... I am very concerned with anything that would begin to upset that process.” Transcript of Proceedings, p. 29, lines 17-22.

Dr. Reiter's report explains the child's history and the doctor's concern that forced contact with Ms. Case would jeopardize the child's emotional stability and recovery. CP 233, p. 398-401. The court offered Ms. Case an opportunity to set over the issue of Ms. Case's contact with her son to another hearing [Transcript, p. 30, line 7-8, and p. 32, lines 9-15], but Ms. Case declined a continuance [Transcript, p. 32, lines 18-20].

Ms. Case's brief and response explain that Ms. Case disagrees with the trial court's decision, but fail to describe how the court abused its discretion or failed to follow the law regarding the Motions for Contempt, to Amend, and to Shorten Time before it. There was no abuse of discretion, no evidence of bad faith, Ms. Triplett had a reasonable excuse for noncompliance with the parenting order with respect to her son's lack of contact with Ms. Case (to which Ms. Case had agreed for a substantial period of time), and the trial court had substantial evidence to support its denial of contempt and clarification that ended forced contact between the child and Ms. Case.

**D. The court properly discussed and made inquiries of the parties regarding the day care expense issue in open court.
A of E 7**

The issue of day care expense reimbursement was raised in Ms. Case's Motion for Contempt, and Ms. Case received the relief she requested. On appeal, she objects to the court's discussion of the issue in open court. It is not error for the court to make inquiries in open court of the parties regarding the issues before it.

"A trial court's ruling on the admissibility of evidence is reviewed for abuse of discretion. *City of Auburn v. Hedlund*, 165 Wash.2d 645, 654, 201 P.3d 315 (2009). A trial court abuses its discretion if the "exercise of its discretion is manifestly unreasonable or based upon untenable grounds or reasons." *State v. Powell*, 126 Wash.2d 244, 258, 893 P.2d

615 (1995).” *In re Detention of Post*, 241 P.3d 1234 (Wash. 2010).

The trial court considered argument, all made in open court in the presence of both parties. No evidence submitted by Ms. Case was stricken. No abuse of discretion or error occurred.

**E. New issues raised on appeal are not considered on appeal.
A of E 7**

Ms. Case did not appeal the trial court’s decision on the Motion to Adjust. Her contempt motion requested a \$3,789.00 credit for overpayment of daycare, but said nothing about alleged old day care debt, whether owed to a third party by Ms. Case or otherwise. CP 214, p. 137, §1.4. Ms. Case is arguing on appeal that this issue should be considered by this appellate court, even though this issue was raised in proceedings resulting in orders entered on 12/18/2002, 6/10/2004, 3/23/2005, and 6/6/2007, from which no appeals were taken, and ultimately caused the entry of the order limiting Ms. Case’s access to the court May 26, 2009 (again, from which no appeal was taken).

“Under the rules of appellate procedure, an “appellate court may refuse to review any claim of error which was not raised in the trial court.” RAP 2.5(a). Issues not presented to the trial court will not be heard for the first time on appeal. *Seattle First Nat’l Bank v. Shoreline Concrete Co.*, 91 Wash.2d 230, 240, 588 P.2d 1308 (1978).” *Jones v. Stebbins*, 122 Wash. 2d 471, 479, 860 P.2d 1009, 1013 (1993).

This motion was resolved by granting Ms. Case a \$3,789.00 credit *plus* an additional \$735 credit that Ms. Case requested orally at the hearing [Transcript, pages 24-27, CP 240, p. 421-422]. Ms. Case got the relief she requested from the trial court, and then some. She cites no error in her brief on this point, and states in her Response, page 6, “Ms. Case is not arguing the October 19, 2010 orders giving her credit for overpayment of day care expenses ...” Then, Ms. Case, in her response to Ms. Triplett’s Motion on the Merits, page 8, explains that her incomprehensible Assignment of Error #7 relates to old day care expenses that were not before the trial court on October 19, 2009⁵, but were apparently addressed in a 2007 support modification and a 2008 motion to vacate she filed (as described on the previous page). No appeal was taken from these decisions, and none is before this court at this time. The RAP 2.5(a) and the doctrine of *res judicata* precludes any appellate court consideration of old day care expenses that were not before the trial court on October 19, 2010 in this appeal.

⁵There is no evidence in the record regarding the Respondent’s request on appeal regarding an alleged old day care debt that was not before the court on October 19, 2010.

F. The court properly shortened time to hear Ms. Triplett's motion to amend the 2005 order simultaneously with the contempt motion, and properly declined to reconsider its decision. A of E 8 & 10

The court's use of procedure and substantive rulings were proper. Ms. Case alleges that the granting of a Motion to Shorten Time, brought under CR 7(b)⁶ and King County LCR 7(b)(10),⁷ was error. The court complied with its own rules. The substance of the issue for which time was

⁶CR 7(b) provides: Motions and Other Papers.

(1) How Made. An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

⁷King Co. LCR7(b) provides:

(b) Motions and Other Documents. ...

(10) Motion Shortening Time.

(A) The time for notice and hearing of a motion may be shortened only for good cause upon written application to the court in conformance with this rule.

(B) A motion for order shortening time may not be incorporated into any other pleading.

(C) As soon as the moving party is aware that he or she will be seeking an order shortening time, that party must contact the opposing party to give notice in the form most likely to result in actual notice of the pending motion to shorten time. The declaration in support of the motion must indicate what efforts have been made to notify the other side.

(D) Except for emergency situations, the court will not rule on a motion to shorten time until the close of the next business day following filing of the motion (and service of the motion on the opposing party) to permit the opposing party to file a response. If the moving party asserts that exigent circumstances make it impossible to comply with this requirement, the moving party shall contact the bailiff of the judge assigned the case for trial to arrange for a conference call, so that the opposing party may respond orally and the court can make an immediate decision.

(E) Proposed agreed orders to shorten time: if the parties agree to a briefing schedule on motion to be heard on shortened time, the order may be presented by way of a proposed stipulated order, which may be granted, denied or modified at the discretion of the court.

(F) The court may deny or grant the motion and impose such conditions as the court deems reasonable. All other rules pertaining to confirmation, notice and working papers for the hearing on the motion for which time was shortened remain in effect, except to the extent that they are specifically dispensed with by the court.

shortened was exactly that raised by Ms. Case's Motion for Contempt. The court gave Ms. Case an opportunity to determine the issue of her future contact with her son at a later time and she declined. [Transcript, p. 30, line 7-8, and p. 32, lines 9-15 & 18-20.] There was no error.

Substantively, the court properly exerted its authority, considering Ms. Triplett's motion, to revise the 2005 order regarding the child's required contact with his parent. The trial judge declined to hold Ms. Triplett in contempt. The court was of the same opinion when Ms. Case moved to reconsider the court's decision. The analysis of the correctness of the trial judge's decision is set forth in §C above. There was no error.

**G. The court's use of *obiter dictum* is proper and is not error.
A of E 9**

Ms. Case's A of E 9 is not clearly discussed in her brief, but appears to stem from a complaint that the court attempted to clarify that it understood Ms. Case's argument and referred to Judge Matson's 2009 orders. Judge Matson's 2009 orders were not pertinent to the issues before the court that resulted in the orders from which this appeal was taken.

“ ‘Statements in a case that do not relate to an issue before the court and are unnecessary to decide the case constitute *obiter dictum*, and need not be followed.’ ” *DCR, Inc. v. Pierce County*, 92 Wash.App. 660, 683 n. 16, 964 P.2d 380 (1998) (quoting *State v. Potter*, 68 Wash.App. 134, 149 n. 7, 842 P.2d 481 (1992)).

The court's commentary at most constituted *obiter dictum* and was not error.

H. No appeal can be taken from the dismissal of a civil action between the parties in this appeal from a contempt decision.

Though not cited as an assignment of error, in her brief, page 27, Ms. Case asks the Court of Appeals to review the dismissal of her civil Complaint for Damages against Ms. Triplett, from which no appeal was sought. An appeal must be timely before the Court of Appeals may accept it. RAP 6.1. To be timely, an appeal must be taken within 30 days of the trial court's order. RAP 5.2. Ms. Case's request for an appeal, *in this action*, from the dismissal on November 19, 2010 in King County Superior Court Cause No. 10-2-35077-2 KNT, is both untimely and not subject to the jurisdiction of this court in this appeal.

I. Attorney's fees should be awarded for defending this frivolous appeal.

Attorney's fees and costs should be awarded to Ms. Triplett for her defense of this frivolous appeal pursuant to RAP 18.9(a), which authorizes the award of fees for defense of a frivolous appeal.

There is no basis in law or fact for Ms. Case's appeal. It is frivolous.

“An appeal is frivolous when, considering the record in its entirety and resolving all doubts in favor of the appellant, no debatable issues are presented upon which reasonable minds might differ; i.e., it is so devoid of merit that no reasonable possibility of reversal exists. *Brin v. Stutzman*, 89 Wash.App. 809, 828, 951 P.2d 291, review denied, 136 Wash.2d 1004, 966 P.2d 901 (1998).” *In re Marriage of Meredith, Id.*, p. 906.

The legal basis for an award of fees to defend a frivolous appeal is found in both RCW 4.84.185 and RCW 26.09.260(13).

RCW 26.09.260(13) provides:

“If the court finds that a motion to modify a prior decree or parenting plan has been brought in bad faith, the court **shall** assess the attorney’s fees and court costs of the nonmoving parent against the moving party.” [Emphasis added.]

Bad faith “refers to conduct involving ill will, fraud, or frivolousness.” *In re Impoundment of Chevrolet Truck, WA License No. A00125A ex rel. Registered/Legal Owner*, 148 Wn.2d 145, 160 n.13, 60 P.2d 53 (2002), citing *In re Recall of Pearsall-Stipek*, 141 Wash.2d 756, 783, 10 P.3d 1034 (2000); *In re Estate of Mumby*, 97 Wash.App. 385, 394-95, 982 P.2d 1219 (1999); *Rogerson Hiller Corp. v. Port of Port Angeles*, 96 Wash.App. 918, 928-29, 982 P.2d 131 (1999).

RCW 4.84.185 provides:

“Prevailing party to receive expenses for opposing frivolous action or defense

“In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense. This determination shall be made upon motion by the prevailing party after a voluntary or involuntary order of dismissal, order on summary judgment, final judgment after trial, or other final order terminating the action as to the prevailing party.

The judge shall consider all evidence presented at the time of the motion to determine whether the position of the nonprevailing party was frivolous and advanced without reasonable cause. In no event may such motion be filed more than thirty days after entry of the order.

“The provisions of this section apply unless otherwise specifically provided by statute.”

The court, in *Skimming v. Boxer*, 119 Wn. App. 748, 756, 82 P.3d 707

(2004), interpreted this statute thusly:

“[RCW 4.84.185] is designed to discourage abuses of the legal system by providing for an award of expenses and legal fees to any party forced to defend against **meritless claims** advanced for harassment, delay, nuisance, or spite. *Suarez v. Newquist*, 70 Wash.App. 827, 832-33, 855 P.2d 1200 (1993).” [Emphasis added.]

An action is **frivolous** within the meaning of RCW 4.84.185 if it “cannot be supported by any rational argument on the law or facts.” *Clarke v. Equinox Holdings, Ltd.*, 56 Wn. App. 125, 132, 783 P.2d 82, review denied, 113 Wn.2d 1001, 777 P.2d 1050 (1989). See also, *Tiger Oil Corp. v. Dep’t of Licensing*, 88 Wn. App. 925, 937-38, 946 P.2d 1235 (1997).

Ms. Case’s appeal cannot be supported by any rational argument on law or facts, there are no debatable issues presented upon which reasonable minds might differ, and it is completely devoid of merit. It is totally frivolous, thus bad faith exists. Ms. Triplett should be awarded her fees and costs on appeal, the amount of which should be presented to the court after its decision on the merits pursuant to RAP 18.1(d).

J. Ms. Case’s request for appellate attorney’s fees is unsupported and should be denied.

On the basis of financial need vs. ability to pay, Ms. Case has requested attorney’s fees in her brief. RCW 26.09.140.⁸ However, Ms. Case has no financial declaration as part of the record on appeal, and thus has failed to comply with RAP 18.1(c). Lacking any evidence of the parties’ relative financial need and ability to pay attorney’s fees, Ms. Case’s request for fees should thus be denied.

V. CONCLUSION

A. Contempt & visitation were properly determined. There was no abuse of discretion and no error. Ms. Triplett had a reasonable excuse for noncompliance with the parenting order with respect to her son, and the trial court had substantial evidence to support its denial of contempt and amendment of the 2005 parenting order.

⁸RCW 26.09.140 provides:

“The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorney’s fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

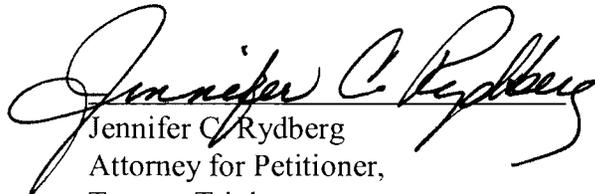
“Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney’s fees in addition to statutory costs.

“The court may order that the attorney’s fees be paid directly to the attorney who may enforce the order in his name.”

B. Day Care was properly awarded. Ms. Case was granted all of the relief she requested to get credit for overcharged day care, *plus* an additional \$735 she requested for the first time at the October 19, 2010 hearing. *Res Judicata*, the failure of Ms. Case to appeal from the 2007 and 2008 decisions about which she complains, Ms. Case's failure to raise the issue at the trial court in her motion, and the failure of Ms. Case to identify in her Brief how the trial court abused its discretion or failed to follow the rule of law in not ruling on an issue that was not before it, preclude any appellate consideration of Ms. Case's complaints about alleged old day care debt.

C. Award attorney's fees & costs to Ms. Triplett. This appeal is completely frivolous. It has no merit. There is no reasonable possibility of reversal. The appeal has no basis in law or fact. Ms. Triplett should be awarded her attorney's fees and costs on appeal.

Dated: June 6, 2011.


Jennifer C. Rydberg
Attorney for Petitioner,
Tammy Triplett
WSBA #8183

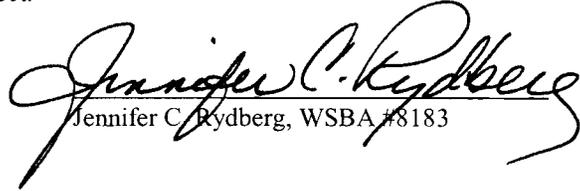
I, Jennifer C. Rydberg, hereby declare that on June 6, 2011, I mailed a copy of this document by first class mail, postage prepaid, to the following person and address:

Stephanie L. Case
619 - 1st Ave. S., Apt. 8
Kent, WA 98032

CERTIFICATION

I hereby declare under penalty of perjury of the laws of the State of Washington that the above statements are true and correct.

DATED: June 6, 2011.


Jennifer C. Rydberg, WSBA #8183

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