

No. 66351-8-I

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

JENNIFER (AYLOR) ELDRED,

Respondent

v.

SCOTT AYLOR,

Appellant

2011 APR 19 PM 10:48  
COURT OF APPEALS  
DIVISION I  
STATE OF WASHINGTON

Appeal from the Superior Court of Skagit County  
Commissioner Brian Paxton

BRIEF OF APPELLANT

Scott Aylor,  
Appellant Pro se  
3627 S. Altamont, Spokane WA  
99223

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
A. TABLE OF AUTHORITIES.....	1
B. CASE SUMMARY.....	2
C. ASSIGNMENTS OF ERROR.....	3
D. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.....	4
E. STATEMENT OF THE CASE.....	5
F. ARGUMENT.....	12
G. CONCLUSION.....	14
H. APPENDIX.....	15

A.

**TABLE OF AUTHORITIES**

**TABLE OF CASES**

	<u>Page</u>
1. <i>Decker v. Decker</i> , 52 Wn.2d 456,326 P.2d 332 (1958).....	4, 13
2. <i>In re: Marriage of Scanlon</i> , 109 Wn. App.167 (2001).....	9
3. <i>Shoemaker v. Rushing</i> , 128 Wn.2d 116, 904 P.2d 1150 (1995).....	9

**STATUTES**

	<u>Page</u>
1. RCW 26.19.080 (3).....	3, 4, 13
2. RCW 26.23.050.....	8
3. RCW 26.19.071(1) & (2).....	8
4. RCW 7.21.010.....	9
5. RCW 26.09.170.....	11

**REGULATIONS AND RULES**

	<u>Page</u>
1. Skagit County Superior Court Rules: Part III, Rule 6(2)(i): Timing For Service of Motions.....	4, 8, 12

**OTHER AUTHORITIES**

	<u>Page</u>
1. The Doctrine of Laches.....	7

B.

### **CASE SUMMARY**

Originally an attempt to obtain a fair child support payment due to financial hardship by Mr. Aylor in September of 2010, this case evolved into a seized opportunity by Ms. Eldred to attack Mr. Aylor through her continued manipulation of the court. Ms. Eldred's previous custody litigation in the family court has yielded a succession of unfounded biases and abuses of discretion in her favor. On November 3<sup>rd</sup>, the court modified the 2008 final support order, haphazardly held Mr. Aylor in contempt for retroactive daycare, and awarded Ms. Eldred \$3804 in 'unpaid daycare' plus \$2280 in 'unpaid rent'.

In what should have been relatively simple adjudications according to the law, Ms. Eldred has once again successfully managed to control the court through the submission of reams of irrelevant and deceptive information intended to overwhelm and confuse the court. Albeit being overwhelmed, the resulting abuses of discretion are based upon untenable grounds, bias, and an erroneous view of the law.

C.

**ASSIGNMENTS OF ERROR**

1. The trial court erred in allowing the improper filing and service of Ms. Eldred's 'motion for order of contempt' on 10/27/2010 and the subsequent addendum to the motion filed on 10/29/2010.
  
2. The trial court abused its discretion in the interpretation of section 3.15 of the 2008 Final Parenting Plan on November 3<sup>rd</sup>, 2010.
  
3. The trial court erred in completely ignoring RCW 26.19.080 (3) – 'Allocation of child support obligations between parents - Court-ordered day care or special child rearing expenses' on November 3<sup>rd</sup>, 2010.
  
4. The trial court erred in the enforcement of property distribution through contempt proceedings on November 3<sup>rd</sup>, 2010.

D.

**ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Did the trial court violate its own rules regarding the acceptance of the timing of Ms. Eldred's motion for contempt - submitted outside the limitations set forth in Skagit County Superior Court Rules: Part III, Rule 6 (2)(i)? The motion was filed on 10/27/2010 and the subsequent addendum to the motion was filed on 10/29/2010 – both documents for the November 3<sup>rd</sup> hearing were filed in less than half the time required by the rule.
  
2. Did the trial court abuse its discretion in misinterpreting the language and legal order of section 3.15 of the 2008 Final Parenting Plan? Should an absolute and higher-ranking statement be whimsically tossed aside and disregarded in favor of a more ambiguous one?
  
3. Has the trial court erred in completely disregarding RCW 26.19.080 (3) and its absolute designation of daycare to be in the same proportion as the basic child support obligation?
  
4. Are provisions of a divorce decree regarding the distribution of property not part of a property settlement and therefore unenforceable in contempt proceedings under *Decker and Decker*, 52 Wn.2d 456, 326 P.2d 332 (1958) and its successor cases?

E.

### STATEMENT OF CASE

In October of 2008 the parties finalized their divorce after terminating legal counsel. Ms. Eldred prepared the divorce documents and sent them to Mr. Aylor for review. After reviewing the documents, Mr. Aylor agreed to sign the divorce agreement at the couple's former mutual residence. Upon arriving, Ms. Eldred made small talk, poured two huge glasses of wine, then brought in the divorce documents and said that she had made a few minor corrections that were nothing of concern. The two then signed the documents.

In the original set of documents given to Mr. Aylor for review, section 3.15 of the Final Order of Child Support 'Payment for Expenses not included in the Transfer Payment' had only the first box checked: 'Does not apply because all payments, except medical, are included in the transfer payment' (A - 1). In the set of divorce documents that Ms. Eldred deceptively presented to Mr. Aylor for signing, the second box was also checked: 'The petitioner shall pay 50 % and the respondent 50 % (each parent's proportional share of income from the Child Support Schedule Worksheet, etc.) [CP 16].

In the 09/12/2008 email in which Ms. Eldred sent that original 2008 Final Order of Child Support, Ms. Eldred made the statement that "I also took them both for tax exemptions since I'm carrying all their expenses" (A - 2). Ms. Eldred's statement proves that she knew that she would be responsible for all the children's expenses until October 2010 – including daycare.

When Ms. Eldred originally sent the documents to Mr. Aylor for review in 2008, Mr. Aylor sent copies of the documents to his brother (John J. Aylor) who still has those documents and can verify that the original had only the first box checked.

Upon reviewing the documents shortly after the divorce, Mr. Aylor noticed the discrepancy of the second box being checked in section 3.15 of the Order of Child Support compared to the original support order he had been given. Mr. Aylor reasoned that as law is required to follow logic, and is written in a logical order, that the first statement of section 3.15 literally nullifies all other statements below it. Mr. Aylor further reasoned that with having the first statement checked, that the checking of the second statement must have been only to show that the additional expenses (including daycare) were actually included in the transfer payment... but that the 50/50 percentages were just a mistake [CP 16].

The counsel that represented the parties throughout most of the divorce proceedings proposed that no child support be paid for two years following the divorce. This was due to the fact that Ms. Eldred's income was considerably higher than Mr. Aylor's, and would have easily merited spousal maintenance almost equal to the amount of child support. As a result, the parties agreed to waive all child support until October 2010 [CP 13]. At no time by either party or counsel involved was any reference made as to daycare being a separate expense from support. In fact, absolutely no reference to daycare was made throughout all the proceedings. The original agreed transfer payment was \$650, yet the proportional amount required by law at that time was \$430 [CP 5-6].

Obviously, the \$220 overage was intended to cover additional expenses: daycare, uncovered medical, etc. However, the lawyers failed to explain that to the parties.

At no time from the finalization of the divorce in October 2008 until October 2010 did Ms. Eldred give Mr. Aylor any notification or invoice showing or eluding to any kind of a payment for daycare. During that same time, Ms. Eldred never once acted as if any payment were due, nor did she try any means to collect daycare. Ms. Eldred is extremely proactive, and had she actually thought that a daycare payment was required of Mr. Aylor she would have sent statements – period. However, Ms. Eldred made absolutely no attempt to collect daycare until Mr. Aylor moved to modify the support agreement in September 2010. Ms. Eldred’s motivation to collect daycare for the previous two years at that point was deceptive, malicious and subject to The Doctrine of Laches [CP 75-85].

Mr. Aylor was of the complete understanding that no support payment of any kind whatsoever was to be made to Ms. Eldred until October 2010. If Mr. Aylor had any idea that he was responsible for daycare, he would have paid it - willingly.

In September of 2010, Mr. Aylor filed with the Skagit County Superior Court to modify the child support plan due to being unemployed and having significantly less income than when the decree was finalized [CP 38-40]. Shortly thereafter, Ms. Eldred counter-filed a motion to modify the support agreement [CP 63-64]. Ms. Eldred’s filings were vindictive in nature, and included requests for large amounts of money and interest – alleging that Mr. Aylor owed daycare for the preceding two years, and also what she calls

'lost rent' (actually mortgage) for the 30<sup>th</sup> street property awarded to Mr. Aylor in the divorce [CP 75-85]. The 30<sup>th</sup> street property was subsequently given back to Ms. Eldred as per the guidelines of the property agreement in the divorce decree [CP 1-8].

Mr. Aylor began paying child support to DCS on the 20<sup>th</sup> of October 2010.

Ms. Eldred submitted a large amount of false and irrelevant information prior to the November 3<sup>rd</sup> 2010 hearing [CP 22-37, 46-59, 63-86, 91-112]. Despite RCW 26.23.050 and RCW 26.19.071(1) & (2), which require the submission of current income, Ms. Eldred submitted income information from 2008 [CP 46]. At the request of the court, Eldred then only submitted income information for 2009 and said that because she was self-employed, that she did not have any income information for 2010, which was acceptable to Commissioner Paxton [RP 26-27]. Obviously as it was almost the end of the year, Ms. Eldred would definitely have had income information for 2010. Ms. Eldred also said that her income was significantly less for 2009, but then she showed up to a meeting several days later in a brand new \$50,000 SUV.

In violation of Skagit County Superior Court Rules: Part III, Rule 6(2)(i): Timing For Service of Motions, Ms. Eldred submitted her 'motion to show cause for contempt' and addendum to the motion three court days, and subsequently one court day before the November 3<sup>rd</sup>, 2010 hearing [91-112]. The rule requires that motions be filed and served at least nine court days prior to a hearing.

During the November 3<sup>rd</sup> 2010 hearing, Commissioner Paxton heard Mr. Aylor's argument regarding section 3.15 of the 2008 Order of Child Support in that both boxes were checked, and that the second box was incorrectly completed [RP 6-13]. In what appears to be another act of favoritism towards Ms. Eldred (with regard to related appellate custody litigation), Commissioner Paxton arbitrarily chose to ignore the first statement, which logically nullifies the rest of that section [RP 11-12]. In disregarding that statement, Commissioner Paxton essentially crossed it out and rewrote the order, then held Mr. Aylor in contempt of the new order. The legal definition of contempt as defined by RCW 7.21.010 in this case means intentional disobedience of any lawful order or decree. In the proceeding, Mr. Aylor very clearly stated that his understanding was that no payment whatsoever was to be made until October 2010 [RP 7]. Yet, Commissioner Paxton once again showed bias towards Mr. Aylor by completely ignoring the fact that Mr. Aylor had not intentionally violated the order, and issued contempt [CP 113-119]. The law clearly dictates that a modified child support obligation may not be imposed retroactively [Shoemaker v. Rushing, 128 Wn.2d 116, 904 P.2d 1150 (1995) & In re: Marriage of Scanlon, 109 Wn. App.167 (2001)].

Commissioner Paxton went on to adjust the support schedule more favorably for Mr. Aylor – due to his situation of financial difficulty and lower income [RP 11].

Commissioner Paxton also simultaneously took the opportunity to lambaste and belittle Mr. Aylor for his financial situation [RP 29-39] – yet ironically Mr. Aylor's financial situation is due directly to the 2008 divorce and subsequent unfounded litigation – all of which has been adjudicated by Commissioner Paxton.

The Commissioner again exhibited bias in judgment when he worked through the petitioner's request for a ridiculous award related to the 30<sup>th</sup> street property. Although the court disregarded many of Ms. Eldred's exorbitant and unfounded requests, the Commissioner did award her a judgment of \$2280 for 'unpaid rent' [CP 113]. Not only was the decision contrary to the rule that property settlements are not enforceable in contempt proceedings, but the property agreement also held no monetary penalty clause for lack of payment [CP 2-3]. By the clauses set forth in the decree and by real estate law, both parties were responsible for the property. The only applicable 'penalty' clause in the decree states that: "Should the Respondent fall behind on rent 15 days or more, the Respondent and all renters in the house shall immediately vacate the house and leave it in move-in ready condition for the Petitioner to either sell or re-rent" [CP 2-3]. Mr. Aylor followed that clause exactly. Ms. Eldred would like to pretend that this situation was part of a rental agreement, however the reality is that both parties' names were on the mortgage, and both parties were responsible for it. There was no rental agreement between the parties, as it was a mortgage. Mr. Aylor could no longer afford the property, so according exactly to the divorce decree he gave it back to Ms. Eldred [CP 2-3]. By giving the 30<sup>th</sup> street property back to Ms. Eldred, Mr. Aylor also gave her \$10,000 in equity.

If 'Paxton' logic is applied evenly in this situation, then it stands to reason that Mr. Aylor should be awarded \$30,000 for the mortgage that he paid between September 2008 and January 2009. Likewise, Ms. Eldred should be held in contempt for violating the 30<sup>th</sup>

street property clause that states: “that the Petitioner sell the property and split any profits with the Respondent 50/50” [CP 2-3]. In complete disregard of RCW 26.09.170 – ‘Modification of a decree for support, property disposition’ – the commissioner essentially added a penalty clause to the contract that did not exist, and then awarded a judgment based upon the new ‘ghost’ clause [CP 2-3] & [CP 113]. The order of contempt and summary judgment do not contain sufficient grounds [CP 113-119]. Commissioner Paxton’s modifications of the property disposition bring about the possible necessity to completely rework the entire divorce decree – including the liquidation of most of the assets for fair and equitable distribution that was not attained in the original decree.

F.

## ARGUMENT

1. The trial court violated its own rules regarding the acceptance of the timing of Ms. Eldred's motion for contempt - submitted outside the limitations set forth in Skagit County Court Rules: Part III, Rule 6 (2)(i). The motion was filed on 10/27/2010 and the subsequent addendum to the motion was filed on 10/29/2010 [CP 91-112] – both documents for the November 3<sup>rd</sup> hearing were filed in less than half the nine court days required by the rule.
2. The trial court abused its discretion in misinterpreting the language and legal order of section 3.15 of the 2008 Final Parenting Plan [CP 16]. Law is based on logic and is formulated with language in a logical manner. Section 3.15 of the 2008 Final Parenting Plan [CP 16] is obviously constructed using Boolean logic (if, then operators). If the first statement in that section is checked, then it doesn't matter what is below it, because the statement is absolute. The Commissioner stated in proceedings that: "the law says that ambiguities in paperwork are construed against the drafter" [RP 11], but then he capriciously discarded the first statement which dictated that all expenses are included in the transfer payment. So instead of holding the 'ambiguity against the drafter', the Commissioner completely awarded it in her favor. The court was not aware that the original 2008 support order that Ms. Eldred gave to Mr. Aylor for review had only the first statement checked [A – 1]. Even so, the Commissioner does not have the authority to carelessly redline and essentially rewrite the part of the order that stated daycare was included in the transfer payment, and then

hold Mr. Aylor in contempt retroactively. That is not the agreement Mr. Aylor signed in 2008.

3. The trial court completely disregarded RCW 26.19.080 (3) and its absolute designation that daycare *shall be* in the same proportion as the basic child support obligation. From October 2008 to October 2010, the support agreement stipulated that the proportional obligation of basic child support for Ms. Eldred was 100%, and 0% for Mr. Aylor [CP 13]. Therefore, the law very directly and simply states that Ms. Eldred was responsible for 100% of the daycare expenses from October 2008 to October 2010.
  
4. The provisions of a divorce decree regarding the distribution of property are part of a property settlement and are therefore unenforceable in contempt proceedings under Decker and Decker, 52 Wn.2d 456, 326 P.2d 332 (1958) and its successor cases.

G.

**CONCLUSION**

Mr. Aylor respectfully asks this court to:

1. Vacate the November 3<sup>rd</sup>, 2010 order of contempt and judgment summary.
2. Require DSHS and/or Ms. Eldred to refund all payments made toward the judgments and remove all liens and matters of enforcement, as Mr. Aylor has not legally been in arrears.
3. Award Mr. Aylor the costs associated with this litigation.

March 16, 2011

Respectfully submitted,

  
\_\_\_\_\_  
Scott Aylor

**CERTIFICATE OF MAILING:** I certify that I mailed a copy of this document to the parties listed, postage prepaid on the 17<sup>th</sup> day of MARCH, 2011.

Signature: 

**APPENDIX**

	<u>Page</u>
Original 2008 Final Child Support Order, Section 3.15.....	A - 1
09/12/2008 Email from Ms. Eldred to Mr. Aylor regarding child support.....	A - 2

- until the child(ren) reach(es) the age of 18, except as otherwise provided below in Paragraph 3.14.
- after the age of 18 for (name) \_\_\_\_\_ who is a dependent adult child, until the child is capable of self-support and the necessity for support ceases.
- until the obligation for post secondary support set forth in Paragraph 3.14 begins for the child(ren).
- Other:

**3.14 Post Secondary Educational Support**

- The right to petition for post secondary support is reserved, provided that the right is exercised before support terminates as set forth in paragraph 3.13.
- The parents shall pay for the post secondary educational support of the child(ren). Post secondary support provisions will be decided by agreement or by the court.
- No post secondary educational support shall be required.
- Other:

**3.15 Payment for Expenses not Included in the Transfer Payment**

- Does not apply because all payments, except medical, are included in the transfer payment.
- The petitioner shall pay \_\_\_\_\_% and the respondent \_\_\_\_\_% (each parent's proportional share of income from the Child Support Schedule Worksheet, line 6) of the following expenses incurred on behalf of the children listed in Paragraph 3.1:
  - day care.
  - educational expenses.
  - long distance transportation expenses.
  - other:

Payments shall be made to  the provider of the service  the parent receiving the transfer payment.

- The obligor shall pay the following amounts each month the expense is incurred on behalf of the children listed in Paragraph 3.1:
  - day care: \$ \_\_\_\_\_ payable to the  day care provider  other parent;
  - educational expenses: \$ \_\_\_\_\_ payable to the  educational provider  other parent;
  - long distance transportation: \$ \_\_\_\_\_ payable to the  transportation provider  other parent.
  - other:

**3.16 Periodic Adjustment**

- Does not apply.
- Child support shall be adjusted periodically as follows:

*Order of Child Support (TMORS, ORS) - Page 8 of 11*  
*PF DR 01.0500 Mandatory (6/2008) - RCW 26.09.175; 26.26.132*

## Child Support Forms

9/12/08

From: **Jennifer Aylor** (jennifer.aylor@cherrycreekenvironmental.com)  
Sent: Fri 9/12/08 2:29 PM  
To: Scott Aylor (ayloron@hotmail.com)

Attachments, pictures and links in this message have been blocked for your safety.

[Show content](#) | [Always show content from jennifer.aylor@cherrycreekenvironmental.com](#)

Hi -

Attached is the Child Support worksheet. I've waived child support until October 2010 per our discussion. I've referenced and will attach a copy of David's letter which I think does a fine job of explaining why there will be no support paid for the first two years. I took on liability of medical insurance for the boys, although if you have the chance to have them covered at no cost out of your pocket I would ask that you do so. I also took them both for tax exemptions since I'm carrying all their expenses. Again, there is no spot for Goddard or Yamashita to sign as we'll be filing withdrawal papers.

Please take a look, print, and sign.

Thanks

J