

69108-2

69108-2

No. 69108-2

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

Robert Gustaveson,

Petitioner,

v.

Amina Babayev,

Respondent.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2013 JAN -4 AM 10:23

RESPONDENT'S BRIEF

Amina Babayev

436 102nd Ave SE, # B 303

Bellevue, Washington 98004

Telephone: (425) 591.4634

I am a custodial parent of the child, and I agree with the Judge Bradshaw's decision.

There is no error. Judge Bradshaw properly found the amount of the child support based on reliable information, such as employment security department data. RCW 26.19.071 (6)(b). Also, the modified Order of Child Support may not be applied retroactively beyond the date of filing. It is clear that under RCW 26.09.170(1) a court may not backdate child support prior to the petition absent a motion to compel a court ordered automatic adjustment; here, there is/was no such provision.

The Petitioner is healthy, employable and there is no change of circumstance. Petitioner has worked successfully despite his criminal background for many years.

The Petitioner did not follow the court rules and he has not provided to the Court any proof of his arguments such as proof of his income-banks statements and business rental incomes. A working copy was never provided by Petitioner in violation of CR 59(9)(b).

Judge Bradshaw properly denied the Petitioner's Motion for Reconsideration because there was no admissible evidence.

Please, dismiss the action.

RESPECTFULLY SUBMITTED this 4th day of January, 2013.

Amina Babayev

Amina Babayev

DECLARATION OF SERVICE

On this 4th day of January, 2013, I caused copies of the foregoing RESPONDENT'S BRIEF to be served on the following party as indicated below:

Party Served	Manner of Service
Robert Gustaveson 412 Wells Ave N. Renton, WA 98057	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via U.S. Mail

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Bellevue, Washington, this 4th day of January, 2013.

Amina Babayev

Amina Babayev

FILED
KING COUNTY, WASHINGTON

JUL 08 2012

SUPERIOR COURT CLERK
BY: PAMELA ANZAI
DEPUTY

**SUPERIOR COURT OF WASHINGTON FOR
COUNTY OF KING**

ROBERT GUSTAVESON,
Petitioner,
vs.
AMINA BABAYEV,
Respondent.

No. 07-3-06528-1 UFC *UPK*
ORDER RE REVISION OF
COMMISSIONER'S RULING

This matter is before the Court pursuant to Petitioner's Motion for Reconsideration of the Court's Order on Revision of the Commissioner's Order that granted his motion for modification of child support and substantially reduced his child support obligation due to a change of circumstance. The Court has again reviewed *de novo* the materials and pleadings before the Commissioner, the recorded proceeding itself, the Motion(s), the Respondent's Declaration(s) in opposition, and the oral arguments of *pro se* Respondent and Petitioner.

At the most recent hearing before the Commissioner, Petitioner father sought modification of Child Support that was entered more than two years ago citing the change of circumstance of unemployment. The Commissioner granted the motion yet he sought revision of the order re retroactivity. Mother argues against the motion asserting that Petitioner has worked successfully despite his criminal background and there is no change of circumstance and, furthermore, that his proof of income—including business rental incomes—has not been (fully) submitted.

The Court now deeming itself fully advised in the premises, it is hereby ORDERED:

ORIGINAL

1 The Petitioner's Motion for Reconsideration is Denied. As a procedural matter,
2 the Court was unaware of Petitioner's reconsideration motion until after receipt of
3 uninvited *ex-parte* voice mail messages. After review of the Clerk's file, the Court
4 discovered the Petitioner's Motion since a working copy was never provided in violation
5 of CR 59(9)(b). In addition to this procedural defect, it remains the case that the
6 Commissioner correctly concluded that a) there is a preponderance of evidence that
7 there has been a change of circumstance, to wit, Petitioner's unemployment; b) that the
8 Child Support obligation should be recalculated, and c) that the modified Order of Child
9 Support may not be applied retroactively beyond the date of filing. It is clear that under
10 RCW 26.09.170(1) a court may not backdate child support prior to the petition absent a
11 motion to compel a court ordered automatic adjustment; here, there is/was no such
12 provision.

13 Furthermore, since the father is currently unemployed there is no current rate of
14 pay. The nature of unemployment¹ must consider a person's work history, education,
15 health, age, and other relevant factors. The Petitioner is healthy, employable, and his
16 current unemployment is for a limited time. The court next statutorily prioritized factor
17 which is "full-time earnings at the historical rate of pay based on reliable information,
18 such as employment security department data." RCW 26.19.071 (6)(b). Here, the
19 records² show that Petitioner's historical rate of pay was \$39,529.51 annually, or
20 \$3,294.13 monthly. The applicable Order of Child Support and Washington State Child
21 Support Schedule Worksheets were previously issued.

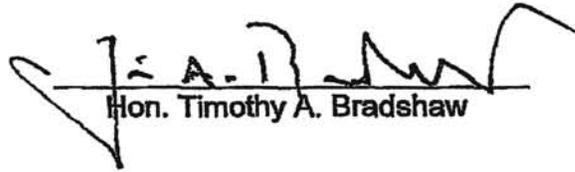
22 Finally, the Court restates that the obligation to pay child support remains;
23 unpaid support continues to be preserved for collection. Also, both parents remain
24 obligated to provide health insurance coverage for the child and to pay uncovered any
25 medical and dental expenses in proportion to their net monthly incomes.

27 ¹ "Voluntariness."

28 ² Petitioner's records are inconsistent with regard to business income/rental income thus requiring
29 imputation based on the statutory prioritization.

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Done this 02nd day of July, 2012.



Hon. Timothy A. Bradshaw

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**Superior Court of Washington
County of KING**

ROBERT GUSTAVESON

and

AMINA BABAYEV

Petitioner,

Respondent.

No. 07-3-06528-1 KNT

Order of Child Support

Final Order (ORS)

Clerk's Action Required

I. Judgment Summary

1.1 Judgment Summary for Non-Medical Expenses

Does not apply.

1.2 Judgment Summary for Medical Support

Does not apply.

II. Basis

2.1 Type of Proceeding

This order is entered under a petition for dissolution of marriage or domestic partnership, legal separation, or declaration concerning validity:

order for modification of child support.

1 **2.2 Child Support Worksheet**

2 The child support worksheet which has been approved by the court is attached to this
3 order and is incorporated by reference or has been initialed and filed separately and is
4 incorporated by reference.

5 **2.3 Other**

6 **III. Findings and Order**

7 ***It Is Ordered:***

8 **3.1 Child(ren) for Whom Support is Required**

9 Name (first/last) Age
10 Daria Gustaveson 3
11

12 **3.2 Person Paying Support (Obligor)**

13 Name (first/last): Robert Gustaveson
14 Birth date:
15 Service Address:

16 ***The Obligor Parent Must Immediately File With the Court and the
17 Washington State Child Support Registry, and Update as Necessary, the
18 Confidential Information Form Required by RCW 26.23.050.***

19 ***The Obligor Parent Shall Update the Information Required by Paragraph 3.2
20 Promptly After any Change in the Information. The Duty to Update the
21 Information Continues as long as any Support Debt Remains due Under
22 This Order.***

23 For purposes of this Order of Child Support, the support obligation is based upon the
24 following income:

25 C. The net income of the obligor is imputed at \$3,294 because:

the obligor is voluntarily unemployed.

The amount of imputed income is based on the following information in order of
priority. The court has used the first option for which there is information:

reliable historical rate of pay information.

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3 **3.3 Person Receiving Support (Obligee)**

4 Name (first/last): Amina Babayev
5 Birth date:
6 Service Address:

7 ***The Obligee Must Immediately File With the Court and the Washington***
8 ***State Child Support Registry and Update as Necessary the Confidential***
9 ***Information Form Required by RCW 26.23.050.***

10 ***The Obligee Shall Update the Information Required by Paragraph 3.3***
11 ***Promptly After any Change in the Information. The Duty to Update the***
12 ***Information Continues as Long as any Monthly Support Remains Due or***
13 ***any Unpaid Support Debt Remains Due Under This Order.***

14 For purposes of this Order of Child Support, the support obligation is based upon the
15 following income:

16 C. The net income of the obligee is imputed at \$1,567 because:

17 the obligee is voluntarily unemployed.

18 The amount of imputed income is based on the following information in order of
19 priority. The court has used the first option for which there is information:

20 minimum wage in the jurisdiction where the parent lives at full-time
21 earnings because the parent:

22 recently came off public assistance, general
23 assistance-unemployable, supplemental security income, or
24 disability

25 The obligor may be able to seek reimbursement for day care or special child rearing
expenses not actually incurred. RCW 26.19.080.

3.4 Service of Process

Service of Process on the Obligor at the Address Required by Paragraph
3.2 or any Updated Address, or on the Obligee at the Address Required by
Paragraph 3.3 or any Updated Address, may Be Allowed or Accepted as
Adequate in any Proceeding to Establish, Enforce or Modify a Child
Support Order Between the Parties by Delivery of Written Notice to the
Obligor or Obligee at the Last Address Provided.

1 **3.5 Transfer Payment**

2 The obligor parent shall pay the following amounts per month for the following child:

3

Name	Amount
Daria Gustaveson	\$421.08
Total Monthly Transfer Amount	\$421.08

4
5

6 ***The Obligor Parent's Privileges to Obtain or Maintain a License, Certificate, Registration, Permit, Approval, or Other Similar Document Issued by a Licensing Entity Evidencing Admission to or Granting Authority to Engage in a Profession, Occupation, Business, Industry, Recreational Pursuit, or the Operation of a Motor Vehicle may Be Denied or may Be Suspended if the Obligor Parent is not in Compliance With This Support Order as Provided in Chapter 74.20A Revised Code of Washington.***

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11 **3.6 Standard Calculation**

12 \$421 per month. (See Worksheet line 17.)

13 **3.7 Reasons for Deviation From Standard Calculation**

14 The child support amount ordered in paragraph 3.5 does not deviate from the standard calculation.

15 **3.8 Reasons why Request for Deviation Was Denied**

16 A deviation was not requested.

17 **3.9 Starting Date and Day to Be Paid**

18 Starting Date: May 1, 2011

19 Day(s) of the month
20 support is due: First of each month.

21 **3.10 Incremental Payments**

22 Does not apply.

23 **3.11 Making Support Payments**

24 Select Enforcement and Collection, Payment Services Only, or Direct Payment:

25

1 Enforcement and collection: The Division of Child Support (DCS) provides support
2 enforcement services for this case because: this is a public assistance case, Support
3 payments shall be made to:

4 Washington State Support Registry
5 P.O. Box 45868
6 Olympia, WA 98504
7 Phone: 1-800-922-4306
8 or 1-800-442-5437

9 A party required to make payments to the Washington State Support Registry will not
10 receive credit for a payment made to any other party or entity. The obligor parent shall
11 keep the registry informed whether he or she has access to health insurance coverage
12 at reasonable cost and, if so, to provide the health insurance policy information.

13 Any time the Division of Child Support is providing support enforcement services under
14 RCW 26.23.045, or if a party is applying for support enforcement services by signing the
15 application form on the bottom of the support order, the receiving parent might be
16 required to submit an accounting of how the support, including any cash medical
17 support, is being spent to benefit the child.

18 **3.12 Wage Withholding Action**

19 Withholding action may be taken against wages, earnings, assets, or benefits, and liens
20 enforced against real and personal property under the child support statutes of this or
21 any other state, without further notice to the obligor parent at any time after entry of this
22 order unless an alternative provision is made below:

23 [If the court orders immediate wage withholding in a case where Division of Child
24 Support does not provide support enforcement services, a mandatory wage assignment
25 under Chapter 26.18 RCW must be entered and support payments must be made to the
Support Registry.]

3.13 Termination of Support

Support shall be paid until the child reaches the age of 18, or as long as the child
remain(s) enrolled in high school, whichever occurs last, except as otherwise provided
below in Paragraph 3.14.

3.14 Post Secondary Educational Support

The right to request post secondary support is reserved, provided that the right is
exercised before support terminates as set forth in paragraph 3.13.

3.15 Payment for Expenses not Included in the Transfer Payment

1 The petitioner shall pay 66.0% and the respondent 34.0% (each parent's proportional
2 share of income from the Child Support Schedule Worksheet, line 6) of the following
3 expenses incurred on behalf of the child listed in Paragraph 3.1:

4 Day care.

5 Educational expenses.

6 Long distance transportation expenses.

7 Payments shall be made to the parent receiving the transfer payment.

8 **3.16 Periodic Adjustment**

9 Does not apply.

10 **3.17 Income Tax Exemptions**

11 Tax exemptions for the child shall be allocated as follows:

12 The provisions regarding the allocation of the tax exemptions for the child contained in
13 the Order of Child support entered on 11/24/2088 shall remain in full force and effect.

14 **3.18 Medical Support - Health Insurance**

15 Each parent shall provide health insurance coverage for the child listed in paragraph 3.1,
16 as follows:

17 **3.18.1 Health Insurance** (either check box A(1) or check box A(2) and complete
18 sections B and C. **Section D applies in all cases.**)

19 A. Evidence

- 20 (1) There is insufficient evidence for the court to determine which parent
21 must provide coverage and which parent must contribute a sum certain.
22 Therefore, the court is not specifying how insurance coverage shall be
23 provided. The petitioner's and respondent's medical support obligations
24 may be enforced by the Division of Child Support or the other parent
25 under RCW 26.18.170 as described in paragraph 3.18.2, below.

B. Findings about insurance:

Does not apply because A (1) is checked, above

C. Parties' obligations:

Does not apply because A (1) is checked above.

1 D. Both parties' obligation:

2 If the child are receiving state financed medical coverage, the Division of Child
3 Support may enforce the responsible parent's monthly premium.

4 The parent(s) shall maintain health insurance coverage, if available for the child
5 listed in paragraph 3.1, until further order of the court or until health insurance is
6 no longer available through the parents' employer or union and no conversion
7 privileges exist to continue coverage following termination of employment.

8 A parent who is required under this order to provide health insurance coverage is
9 liable for any covered health care costs for which that parent receives direct
10 payment from an insurer.

11 A parent who is required under this order to provide health insurance coverage
12 shall provide proof that such coverage is available or not available within 20 days
13 of the entry of this order to the other parent or the Washington State Support
14 Registry if the parent has been notified or ordered to make payments to the
15 Washington State Support Registry.

16 If proof that health insurance coverage is available or not available is not
17 provided within 20 days, the parent seeking enforcement or the Department of
18 Social and Health Services may seek direct enforcement of the coverage through
19 the other parent's employer or union without further notice to the other parent as
20 provided under Chapter 26.18 RCW.

21 **3.18.2 Change of Circumstances and Enforcement**

22 A parent required to provide health insurance coverage must notify both the Division of
23 Child Support and the other parent when coverage terminates.

24 If the parents' circumstances change, or if the court has not specified how medical
25 support shall be provided, the parents' medical support obligations will be enforced as
26 provided in

27 RCW 26.18.170. If a parent does not provide proof of accessible coverage for the
28 child(ren) through private insurance, a parent may be required to satisfy his or her
29 medical support obligation by doing one of the following, listed in order of priority:

30 Providing or maintaining health insurance coverage through the parent's employment
31 or union at a cost not to exceed 25% of that parent's basic support obligation;

32 Contributing the parent's proportionate share of a monthly premium being paid by the
33 other parent for health insurance coverage for the child(ren) listed in paragraph
34 3.1 of this order, not to exceed 25% of the obligated parent's basic support
35 obligation; or

36 Contributing the parent's proportionate share of a monthly premium paid by the state
37 if the child(ren) receives state-financed medical coverage through DSHS under
38 RCW 74.09 for which there is an assignment.

39 A parent seeking to enforce the obligation to provide health insurance coverage may
40 apply for support enforcement services from the Division of Child Support; file a motion

1 for contempt (use form WPF DRPSCU 05.0100, Motion/Declaration for an Order to
2 Show Cause re Contempt); or file a petition.

3 **3.19 Uninsured Medical Expenses**

4 Both parents have an obligation to pay their share of uninsured medical
5 expenses.

6 The petitioner shall pay 66.0% of uninsured medical expenses (unless stated
7 otherwise, the petitioner's proportional share of income from the Worksheet, line
8 6) and the respondent shall pay 34.0% of uninsured medical expenses (unless
9 stated otherwise, the respondent's proportional share of income from the
10 Worksheet,
11 line 6).

12 **3.20 Back Child Support**

13 Back child support that may be owed is not affected by this order.
14 Back interest that may be owed is not affected by this order.

15 **3.21 Past Due Unpaid Medical Support**

16 Unpaid medical support that may be owed is not affected by this order.
17 Back interest that may be owed is not affected by this order.

18 **3.22 Other Unpaid Obligations**

19 Other obligations that may be owed are not affected by this order.
20 Back interest that may be owed is not affected by this order.

21 **3.23 Other**

22 Dated: April 25, 2022

23 
24 **Judge/Commissioner**

25 Presented by: _____

Approved for entry:
Notice of presentation waived:

Signature of Party or Lawyer/WSBA No.

Signature of Party or Lawyer/WSBA No.

Part II: Basic Child Support Obligation (see Instructions, page 7)		
7. Each Parent's Basic Child Support Obligation without consideration of low income limitations (Each parent's Line 6 times Line 5.)	\$421.08	\$216.92
8. Calculating low income limitations: Fill in only those that apply.		
Self-Support Reserve: (125% of the Federal Poverty Guideline.)	\$1,164.00	
a. Is combined Net Income Less Than \$1,000? If yes, for each parent enter the presumptive \$50 per child.	-	-
b. Is Monthly Net Income Less Than Self-Support Reserve? If yes, for that parent enter the presumptive \$50 per child.	-	-
c. Is Monthly Net Income Greater Than Self-Support Reserve? If yes, for each parent subtract the self-support reserve from line 3. If that amount is less than line 7, then enter that amount or the presumptive \$50 per child, whichever is greater.	-	-
9. Each parent's basic child support obligation after calculating applicable limitations. For each parent, enter the lowest amount from line 7, 8a - 8c, but not less than the presumptive \$50 per child.	\$421.08	\$216.92
Part III: Health Care, Day Care, and Special Child Rearing Expenses (see Instructions, page 8)		
10. Health Care Expenses	Father	Mother
a. Monthly Health Insurance Paid for Child(ren)	-	-
b. Uninsured Monthly Health Care Expenses Paid for Child(ren)	-	-
c. Total Monthly Health Care Expenses (line 10a plus line 10b)	-	-
d. Combined Monthly Health Care Expenses (line 10c amounts combined)		-
11. Day Care and Special Expenses		
a. Day Care Expenses	-	-
b. Education Expenses	-	-
c. Long Distance Transportation Expenses	-	-
d. Other Special Expenses (describe)		
	-	-
	-	-
	-	-
e. Total Day Care and Special Expenses (Add lines 11a through 11d)	-	-
12. Combined Monthly Total Day Care and Special Expenses (line 11e amounts Combined)		-
13. Total Health Care, Day Care, and Special Expenses (line 10d plus line 12)		-
14. Each Parent's Obligation for Health Care, Day Care, and Special Expenses (multiply each number on line 6 by line 13)	-	-
Part IV: Gross Child Support Obligation		
15. Gross Child Support Obligation (line 9 plus line 14)	\$421.08	\$216.92
Part V: Child Support Credits (see Instructions, page 9)		
16. Child Support Credits		
a. Monthly Health Care Expenses Credit	-	-
b. Day Care and Special Expenses Credit	-	-

c. Other Ordinary Expenses Credit (describe)	-	-
d. Total Support Credits (add lines 16a through 16c)	-	-
Part VI: Standard Calculation/Presumptive Transfer Payment (see Instructions, page 9)		
17. Standard Calculation (line 15 minus line 16d or \$50 per child whichever is greater)	\$421.08	\$216.92
Part VII: Additional Informational Calculations		
18. 45% of each parent's net income from line 3 (.45 x amount from line 3 for each parent)	\$1,247.41	\$641.64
19. 25% of each parent's basic support obligation from line 9 (.25 x amount from line 9 for each parent)	\$105.27	\$54.23
Part VIII: Additional Factors for Consideration (see Instructions, page 9)		
20. Household Assets (List the estimated value of all major household assets.)	Father's Household	Mother's Household
a. Real Estate	-	-
b. Investments	-	-
c. Vehicles and Boats	-	-
d. Bank Accounts and Cash	-	-
e. Retirement Accounts	-	-
f. Other: (describe)	-	-
	-	-
	-	-
	-	-
21. Household Debt (List liens against household assets, extraordinary debt.)		
a.	-	-
b.	-	-
c.	-	-
d.	-	-
e.	-	-
f.	-	-
22. Other Household Income		
a. Income Of Current Spouse or Domestic Partner (if not the other parent of this action)		
Name	-	-
Name	-	-
b. Income Of Other Adults in Household		
Name	-	-
Name	-	-
c. Gross Income from overtime or from second jobs the party is asking the court to exclude per Instructions, page 8	-	-
d. Income Of Child(ren) (if considered extraordinary)		
Name	-	-
Name	-	-

Other Factors For Consideration (continued) (attach additional pages as necessary)

Signature and Dates

I declare, under penalty of perjury under the laws of the State of Washington, the information contained in these Worksheets is complete, true, and correct.

Mother's Signature

Father's Signature

Date

City

Date

City

J. A. [Signature]
Judicial/Reviewing Officer

April 25, 2012
Date

**Worksheet certified by the State of Washington Administrative Office of the Courts.
Photocopying of the worksheet is permitted.**

WSCSS-Worksheets - Mandatory (CSW/CSWP) 07/2011 Page 5 of 5

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