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No. 69436-7-I

COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION ONE

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In re the Marriage of  
SHELLY P. ALDRIDGE,  
Respondent,  
v.  
R. DEAN ALDRIDGE,  
Appellant.

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RESPONDENT'S BRIEF

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## **I. INTRODUCTION**

Dean and Shelly Aldridge divorced in 2007. They have one child of the marriage where primary care was awarded to Shelly, and the parties agreed that Dean's child support obligation would not be changed until his maintenance obligation ended in January 2012. As contemplated, Shelly filed a child support modification when Dean's maintenance obligation ended.

Realizing that his income and resources would be an issue in the upcoming child support modification, Dean and his new wife, Dr. Sides, scrambled in an attempt to separate their financial situations as they had commingled their assets and business dealings and Dr. Sides had inherited millions of dollars from her family. They drew a bogus Antenuptial agreement, quickly changed vehicle and boat titles, and Dean signed his interest in their business over to Dr. Sides, claiming he only "assisted Dr. Sides" in her pyramid scheme business. At the same time, Dean ran his business into the ground so that it looked like he had little income and that Dr. Sides' income and assets were completely separate from his so he could plead poverty when the child support review came to fruition.

Unfortunately for Dean, there were sufficient financial and other documents which refuted his claimed financial status and when the matter came before The Honorable Deborah Fleck, she equitably apportioned the

cost of raising the parties' daughter between them, recognizing that Dean and Dr. Sides' monthly expenses were about the same as Shelly's annual net income. Dean's charade having failed, he appeals Judge Fleck's decision which requires him to pay \$1,336 as child support, and the child's extracurricular expenses.

## **II. STATEMENT OF THE CASE**

Shelly and Dean Aldridge were divorced in 2007. They have one child of the marriage, Brianna, who is now 13 years of age. Brianna lives primarily with her mother, Shelly, and has residential time with her father, Dean, on alternating weekends from Thursday after school until Monday morning (return to school) and one weekday evening on his off week. CP 294.

When the Decree of Dissolution was entered, Dean was ordered to pay spousal maintenance in the amount of \$787.61 per month for five years through January 2012. CP 417. Dean was also ordered also ordered to pay child support in the amount of \$712 per month and the parties specifically agreed that neither of them would request a change of that obligation for five years when the maintenance ended. CP 318.

Both of the parties anticipated that the child support obligation was going to be adjusted or modified when the maintenance terminated in January 2012, and both knew that their respective financial and marital

circumstances had changed from the time of the divorce and the incomes set out on the child support worksheets at the time of the original child support order had changed substantially. CP 295. Dean's income was reported at \$7,500 and Shelly's income was reported at \$2,500. CP 321.

Dean knew that this modification was coming up and in the meantime, after the divorce, Dean married Dr. Brenda Sides, a naturopath. CP 296. Dr. Sides has several millions of dollars and her tax return shows large liquidations of her assets, such as \$468,450 in 2010 (CP 362) and \$657,116 in 2011 (CP 354).

Dean and Dr. Sides commingled their assets at the beginning of their marriage and as the reality of the looming child support modification drew near, they realized that this commingling could be disastrous in terms of Dean's financial condition. So Dean and Dr. Sides did three things in 2011 to prepare for the modification.

1. They executed a purported Prenuptial Agreement. CP 92, CP 773-775. We are asked to believe that Dr. Sides, who has millions in separate property, entered into this prenuptial agreement which was apparently drawn up by the parties on a cheap do-it-yourself form without representation, as no lawyer's name appears anywhere on this simple form document. It was not as though she could not afford legal representation.

2. In June 2011, Dean and Brenda realized that they had titled some of their expensive toys in joint names (a ski boat and trailer, 2 Yamaha 4-wheelers, and a motorcycle—these are not to be confused with the yacht which is owned by one or both of them). CP 364. This document is notarized by the same Christina Thain who also notarized the Prenuptial Agreement four years earlier mentioned above. This might be coincidence, but she most likely backdated documents.

3. The biggest fabrication that Dean and Dr. Sides entered into was when Dean transferred all of his interest in Dean and Dr. Sides' businesses to Dr. Sides in August 2011 (most likely also backdated) just four months prior to the subject modification. Dean had now successfully transferred away all of his assets to Dr. Sides for absolutely no consideration (none is stated anywhere in any document) and he was set to take on the pending review of his income and resources in the modification which he knew was a short time away.

Unfortunately for Dean, not everyone believed his fabricated financial status and certain documents could not be changed. To set the stage, the first evidence of Dean's charade is the Youtube video of Dean and Dr. Sides. CP 333. This Youtube video shows Dean navigating their yacht while Dr. Sides serves food to him while he extols the virtues and

success of their business. The title on the screen calls out Dean as the “executive director.” CP 296, 333.

Also unfortunately for Dean, the money he received from Shaklee Corporation in 2010 and 2011 had to be claimed as income. In the two years prior to the modification, Dean reported gross receipts of \$253,981 for himself personally for “insurance and marketing.” CP 357. He states in his opening brief that of that amount, he report \$88,457 as earned income and \$165,524 is alleged to be a loan, although he claimed it as income without any explanation except that “his tax accountant recommended he claim the loans, less expenses, on a 2010 tax return.” CP 67, 99.

His claimed expenses include the depreciation of his two Cadillac Escapades (\$88,000), office furniture of \$21,000 (he works out of his house), a Ford (three cars now), and computer and office equipment of \$20,000 (again, he works out of his house). The same 2010 depreciation schedule alludes to other Schedule A deductions for a house (\$995,000), land (\$240,000) and a boat (\$222,906). CP 359.

In late 2011, Dean transferred his ownership of Dean and Dr. Sides’ business to Dr. Sides for no consideration. CP 66, 85, 94, 100. So for 2011, Dean claims \$61,846 (CP 577, 578, 842), and Aldridge Enterprises (Dean and Brenda) claims income of \$127,869 (CP 533, 577,

579, 580). Of course, Dean claims that the accountants mistakenly reported \$51,122 (Shaklee Corporation) to D&B Enterprises (CP 66) most likely because they cannot keep up with Dean's shell game. In any event, if the \$51,122 is imputed to Dean, his income was \$61,846 from his individual efforts, and the other \$76,747 was income to Dean and Brenda, as his transfer of his interest in the marital business is nothing but subterfuge and without consideration.

All of the chicanery in Dean and Dr. Sides' financial information made it very difficult to calculate Dean's income and was confusing for Commissioner Gallaher when the case was originally heard on the trial by affidavit calendar in its typical fifteen minute presentation format. Commissioner Gallaher ruled that Shelly's income was \$3,750 per month gross (not challenged by Dean). CP 99. Commissioner Gallaher then ruled that the \$5,153 gross income Dean had in 2011 was a "reasonable estimate of his current earning capacity." CP 175. That resulted in a basic child support obligation of \$800 and then the commissioner granted Dean's request for a downward deviation based on Dean's residential time with the daughter (CP 175) and ordered a transfer payment of \$537. The commissioner also allocated educational expenses pro rata and ordered Dean to pay all of the child's sports costs as Dean had paid in the past. CP 175, 198.

Shelly timely filed a motion for revision and Judge Deborah Fleck revised the commissioner's ruling, setting the transfer payment at a standard calculation of \$1,336 based on a gross income for Dean of \$11,049 and net income of \$8,677, and a gross income for Shelly of \$3,750 and a net income of \$3,231. CP 276. The court also ordered Dean to pay 100% of expenses for Brianna's extracurricular activities as an upward child support deviation (CP 243, 250) just as Commissioner Gallaher had done. Judge Fleck also ordered Dean to pay \$5,000 toward Shelly's fees. Dean appealed.

### **III. ARGUMENT**

A. Standards of Review. In subsection IV(A) of Dean's opening brief, he sets out the standards for review and Shelly takes no exception to the law he sets forth therein. As Dean's brief states:

The court reviews the discretionary decisions reflected in a child support order for an abuse of discretion. Marriage of Booth, 114 Wn.2d 772, 776, 791 P.2d 519 (1990)

A Court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or reasons:

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. Marriage of Littlefield, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).

B. Summary of Method for Determining Child Support. Dean sets forth the method for determining child support obligations and once again, Shelly does not dispute his approach to establish a child support obligation.

In establishing a uniform schedule, the legislature intended “to insure that child support orders are adequate to meet a child’s basis needs and to provide additional child support commensurate with the parents’ income, resources, and standard of living. RCW 26.19.001 (Emphasis added.)

As Dean’s brief alleges, the first step is to determine the basic child support obligation based on the parents’ combined monthly net income and number and ages of the children. RCW 26.19.011(1), 020. The economic table sets forth the presumptive obligation for a combined monthly net income of up to \$12,000. RCW 26.19.020

Then certain special expenses such as daycare, unusual health care expenses and other special expenses are considered and are generally allocated between the parties based on each party’s proportionate share of the total net income. RCW 26.19.080(1)-(3).

Again, as Dean’s brief point outs, the Court may then deviate upward or downward from the standard calculation upon written findings of fact. RCW 26.09.011(9). (Emphasis ours.)

C. The Court Did Not Err in Determining the Basic Support Obligation.

1. *The trial court did not abuse its discretion in attributing half of Dr. Sides' company income to Dean.* While it is true that RCW 26.19.070(4)(a) states that income of a new spouse or domestic partner or income of other adults in the household shall not be included in gross income, Dean has not established that the income allegedly attributed to Dr. Sides is actually her income. As we pointed out in the Statement of this Case, Dean and Dr. Sides always conducted their businesses together as "D&B Enterprises, LLC" (Dean and Brenda). They treated their business schemes as joint ventures between the two of them jointly until the eve of this modification action, and then Dean transferred his interest in the joint venture to Dr. Sides for no consideration so he could claim no income from their business ventures. This was not just Dr. Sides' business-it was Dean and Dr. Sides' business, and his transfer of his interest in the business should be disregarded by the Court and at least one-half of the income from the joint ventures should be attributed to Dean.

Dean admits that he had separate income of \$61,846 in 2011 and that Dr. Sides' (the joint venture) had income of \$76,747 after their accountant's mistakes. At the very least, Dean's income should be:

\$51,846 (admitted)  
\$38,373 (one-half of the then joint ventures)  
\$100,219 (gross for 2011)

That would leave Dean with a gross monthly income of \$8,351. But the analysis of Dean's income cannot stop there as Dean and Dr. Sides wrote off everything but the kitchen sink on their tax returns and justified none of the Cadillacs, Mercedes, yachts or home furnishings anywhere in their whole response to the child support modification. It was Dean's burden of proof to show that these deductions were reasonable and necessary and, of course, they were not. RCW 26.19.071(5)(h).

The trial court was left without sufficient information from Dean to establish his real income. Shelly's position was that Dean had not provided sufficient information to justify his business deductions and thus the net income to D&B Enterprises, LLC (allegedly Dr. Sides' business) was higher than \$76,747 and thus Dean's one-half of that income was greater than \$38,373. The Court agreed with Shelly's position that Dean's real income was approximately \$11,049 per month with a net income of \$8,677 after tax, and that Shelly's gross income was \$3,750 gross per month with a net income of \$3,231. The standard calculation was \$1,336 and the Court ordered Dean to pay that amount.

This calculation was made without including any of Dr. Sides' income in Dean's income, as Dr. Sides' income was really the joint

venture income of Dean and Dr. Sides. Judge Fleck adopted of Shelly's proposed worksheet which included the incomes set forth above.

Revisiting Dean's argument that the Court of appeals should only disturb the trial court's decision if the trial court's decision was an abuse of discretion based on "untenable grounds" and "unsupported by the records," Shelly submits that the records absolutely support Judge Fleck's determination of the parties' incomes and the imposition of the resulting standard calculation of \$1,336 per month.

D. The Trial Court Did Not Err in Allocating Special Expenses and Extracurricular Activities. Dean's assignment of error regarding deviation with respect to their daughter's extracurricular expenses is without merit. The issue of deviation with a similar fact pattern was set out in Brandli v. Talley, 98 Wn.App. 521, 991 P.2d 94 (1999). In that case, the mother (who was the obligor) remarried a Microsoft employee who had substantial wealth. The Court ruled that the basic child support obligation should be calculated using the two parents' income. Then the Court ruled that it:

. . . should consider all the income and resources of each parent's household before deciding what each parent's actual child support obligation will be. In other words, the court must consider the income and resources of the parents, as well as their spouses, before deciding whether to deviate from the basic support obligations.

Clearly, Judge Fleck had the discretion and the obligation to consider Dr. Sides' income and resources (although Dr. Sides has never disclosed her resources to the court in all of the voluminous pleadings and financial declarations filed in this matter—for obvious reasons). See also RCW 26.19.075(2)

Judge Fleck aptly pointed out in her Memorandum of Decision (CP 249) that “. . . the father lists \$31,348 in monthly expenses that are reflective of significant wealth and perhaps significant income:

- 1) \$6,305 in mortgage
- 2) \$3,347 in utilities (more than mother earns in a month)
- 3) \$5,650 in food
- 4) \$3,404 cars
- 5) \$3466 in miscellaneous expenses (including boat expenses associated with a roughly quarter million dollar boat that may now have been sold):

Dean believes Judge Fleck abused her discretion in ordering him to pay 100% of Brianna's extracurricular activities because, he reasons, Judge Fleck did not deviate from the standard calculation in setting the basic support obligation. Dean is not reading Judge Fleck's decision closely enough.

Although Judge Fleck adopted Shelly's worksheets, she also recognized the prenuptial agreement of Dean and Dr. Sides and stated that: "The resources and income, regardless of a prenuptial agreement, must be considered by the Court when considering a deviation." Memorandum of Decision, CP 249.

Judge Fleck went on to state that because Dean requested a deviation, she could consider Dr. Sides' income and resources and specifically stated:

Because of that request, I am able to consider the income of Dr. Sides as well; this effectively almost doubles the income in the father's household as a part of the consideration for the deviation. RCW 26.19.025(1)(a)(i). The father also has a far greater earning capacity, should he choose to exercise it and continue to develop it than the mother does. See, e.g., In re Crosetto, 82 Wn.App. 545 (1996); In Re Marriage of Glass, 67 Wn.App. 378 (1992).

Memorandum of Decision, CP 249

In summing up her final conclusions about the transfer payment she was ordering Dean to pay, she stated:

Because of the disparity in earnings, the income and wealth in the father's household, the most standard of living the mother is able to afford for the child based on her earnings plus the basic child support contribution from the father, and the father's greater earning capacity that he is currently not utilizing, an upward deviation is appropriate in this case. See Brandi v. Talley, supra. This level of child support is retroactive to the date of filing this petition.

The conclusion Judge Fleck reached is that even if the child support worksheets may include income of his wife and somewhat imputed income to him, when she considered all of the factors, she deviated upward in her award of basic child support to the sum of \$1,336.

Having found a reason to deviate on the underlying basic child support obligation, Dean's assignment of error regarding the 100% award of the child's extracurricular expenses to him is rendered moot, i.e., Judge Fleck did deviate upward in her award of the basic child support obligation and could also do so in the award of the extracurricular activity special expenses.

Dean complains that "child support is not intended to equalize the standard of living of the parent's households. Daubert, 124 Wn.App at 498." It is hard to believe that Dean would even make such a statement in light of Judge Fleck's observation that Dean's household lists \$31,348 per month in household expenses while Shelly's net income for the year is less than that.

E. Any Remand Should Be to Superior Court Judge Deborah Fleck. If this Court remands any part of this decision, Dean cites no authority remanding to a judge other than the judge who issued the decision from which Dean appeals, as there is no authority. Dean just does not like Judge Fleck because she did not agree with him.

#### IV. CONCLUSION

The trial court's decision was well within reasonable limits based on the facts of this case and Judge Fleck did not abuse her discretion by considering the total income circumstances of both households in awarding an elevated level of support and apportionment of extracurricular activities. Dean cannot be heard to complain about the status of the fact that the Court had to deal with when he and his current wife so boldly attempted to manipulate their incomes and other resources on the eve of the modification which has created confusion in the record which we believe was Dean's hope. Judge Fleck's decision should be affirmed in tota'.

Respectfully submitted this <sup>✱</sup>14 day of March, 2013.



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DIVISION ONE

SHELLY P. ALDRIDGE,	)	
	)	
Respondent,	)	DECLARATION OF
	)	SERVICE
vs.	)	
	)	
R. DEAN ALDRIDGE,	)	
	)	
Appellant.	)	
_____	)	

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the dated stated below, I caused to be delivered in the manner indicated a copy of the Respondent's Brief and this Declaration of Service on the following parties:

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