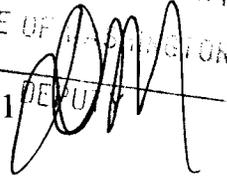


COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY: 

Appeals Case No. 41352-3-11

COURT OF APPEALS DIVISION II
OF THE STATE OF WASHINGTON

Eric Arthur Hager,

Appellant,

v.

Elizhalee K. (Hager) (Wilson) Cunningham,

Appellee.

APPELLANT'S BRIEF

ERIC A. HAGER
710 3rd Street NE
Puyallup, WA 98372
(253) 389-2295

Pro Se

Filed in the Court of Appeals
of the State of Washington,
this ____ day of January, 2011
By: _____

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A. ASSIGNMENTS OF ERROR

1. The trial court erred in entering the order of August 30, 2010, denying the appellant’s petition for modification of child support.

2. The trial court erred in failing to enter Findings of Fact and Conclusions of Law explaining the order of August 30, 2010, denying the appellant’s petition for modification of child support.

3. The trial court erred in entering the order of September 27, 2010, denying the appellant’s motion for revision.

4. The trial court erred in failing to enter Findings of Fact and Conclusions of Law explaining the order of September 27, 2010, denying the appellant’s petition for revision of the order denying modification of child support.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Should the trial court have denied the requested modification of child support when the law and case history provides for a modification?
2. Should the trial court have denied the requested modification of child support while providing no Findings of Fact and Conclusion of Law?
3. Should the trial court have denied the requested motion for revision after hearing oral testimony factually determining a change in circumstances and a change in income?
4. Should the trial court have denied the requested motion for revision while providing no Findings of Fact and Conclusion of Law?

B. STATEMENT OF THE CASE

On May 4, 2010, Eric A. Hager, “Appellant” filed a petition for modification of child support. In the pleadings submitted, he provided accurate income and expense figures, and provided a calendar proving factually how much residential time he had spent with his two children, C.H. and J.H. The residential time was provided lawfully in the final Parenting Plan, effective April 4, 2008. The petition for modification was denied by Pro Tem Michael Scholl. Judge Scholl made a brief statement of denial because of no factual basis¹, but did not file a Findings of Fact and Conclusions of Law.

¹ See Order Dismissing Modification, filed 8/30/10 in the record.

On September 1, 2010, a motion for revision was submitted. Judge Beverly G. Grant heard testimony on the motion, and also denied it², but gave no reason, and did not file a Findings of Fact and Conclusions of Law.

D. **ARGUMENT**

I. Apportionment of Child Support

Parental child support obligations are determined by applying the uniform child support schedule to the combined monthly net income of both parents to determine the presumptive support level.³ The purposes of the uniform child support schedule are ‘to insure that child support orders are adequate to meet a child's basic needs and to provide additional child support commensurate with the parents' income, resources, and standard of living’ and to *equitably apportion the child support obligation between the parents.*⁴ (Emphasis added.)

26.09.170(7)(a) If twenty-four months have passed from the date of the entry of the order or the last adjustment or modification, whichever is later, the order may be adjusted without a showing of substantially changed circumstances based upon:

- (i) Changes in the income of the parents; or
 - (ii) Changes in the economic table or standards in chapter 26.19 RCW.
- (b) Either party may initiate the adjustment by filing a motion and child support worksheets.

² See Order Denying Motion, filed 9/27/10 in the record.

³ RCW 26.19.035(1).

⁴ RCW 26.19.001.

Because there have been changes in the income of both parents, and the marital status of the custodial parent, the current child support order is no longer fair and equitable. Therefore, it is reasonable for the noncustodial parent to request a modification of the child support order.

II. Washington State Child Support Worksheets Were Prepared and Provided

As a matter of law, the worksheets are the factual basis of the order of support.⁵ RCW 26.19.035 requires that child support worksheets are to be completed under penalty of perjury, and the court is not to accept incomplete worksheets or worksheets that vary from the worksheets developed by the Administrative Office of the Court. This was done by the appellant. He provided tax returns and paystubs proving his accurate income information. On the worksheet he submitted, he also used information from paystubs provided by the mother. It was necessary to average the paystubs, because they were incomplete and she did not work steadily. Since the original worksheets were submitted, the custodial parent testified under oath in court that she makes \$4,000.00 per month.

III. The appellant requested a deviation for substantial residential time

The appellant requested a deviation for substantial residential time, and proved to the court the actual amount of time by providing a calendar⁶ showing the days the children stayed with him overnight. A deviation is given at the discretion of the

⁵ See Washington State Child Support Worksheets and Sealed Financial Source Documents, filed 5/4/10 by Mr. Eric Hager in the record.

⁶ See Exhibit A attached to Washington State Child Support Worksheets filed by Mr. Hager on 5/4/10 in the record.

court, and could have been considered, but was not recognized. The assumption is that the noncustodial parent incurs no expense for raising the child (no presents, no food, no transportation costs, and no need for recreation). The reality is this is untrue. In this case, the father delights in buying toys for his children, driving them back and forth to school, etc. An order of child support which fails to take this into consideration results in an unfair advantage to the custodial parent. Both parents share equal caregiving responsibility, and while the parents' incomes are not equal, the difference can be calculated given accurate income and expense figures. *Arvey's* emphasis on equitable apportionment in light of equal childcaring responsibilities is persuasive and consistent with RCW 26.19.001, which says child support should be equitably apportioned between the parents. Additionally, in *State ex rel. M.M.G. v. Graham*, the court found, "both parents were responsible for the same children and the same needs, and the plain text of the applicable statute gave the trial court discretion to deviate from the basic child support obligation based on a variety of factors, one of which was the amount of residential time the children spent with the parents."⁷ (RCW 26.19.075(d))

IV. The father was threatened with loss of residential time

During oral argument, the mother stated she would waive all child support costs and all unpaid back child support if the father would give up visitation rights to the children. Judge Beverly Grant said to the father,

⁷ *State ex rel. M.M.G. v. Graham*, 159 Wash .2d 623, 152 P.3d 1005.

“Let me ask you this, do you want to keep the time as it is, or not?”⁸

This sounded like a threat to the father, who did not seek to change the parenting plan, but was seeking a modification of child support. It is not lawful to use the children as a bargaining tool to get awarded an unfair amount of child support. The Washington State Parenting Act states:

“The State recognizes the fundamental importance of the parent/child relationship to the welfare of the child; and that the relationship between the child and each parent should be fostered unless inconsistent with the child’s best interest.”⁹

Asking the father to give up residential time with the children unless he wants to pay an unequal amount of child support is not in the best interests of the children. Rather, child support must be equitably and fairly apportioned between the parents.

V. Judge Grant stated there was both a change in income and circumstances

During oral argument, Judge Grant stated there was both a change in income of the parties and a change of circumstances.¹⁰ The mother had remarried, and testified her husband makes a substantial amount of income. She testified she makes \$4,000 per month. The court was unable to get accurate figures of the change in income because the mother stated the funds were “under the table.” The mother stated she feels any change in ordered child support is a “punishment” to her. Considering these facts, and knowing the judge was aware of the mother’s refusal to cooperate with accurate

⁸ Page 24, Line 20, 21 of Transcription.

⁹ RCW 26.09.002.

¹⁰ Page 13, Line 8-11.

figures of income and expenses, it was a surprise when Judge Grant denied the modification request. It was further a surprise when Judge Grant did not fill out a Findings of Fact and Conclusions of Law, thus making it uncertain why she ruled as she did.

E. **CONCLUSION**

For the reasons listed above, the appellant requests this case be REMANDED to trial court, giving all relief requested in the Petition for Modification of Child Support.

DATED this 03/2/2011 day of January, 2011.

ERIC A. HAGER

E. A. Hager 03/2/2011

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STATE OF WASHINGTON
BY *[Signature]*
DEPUTY

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CERTIFICATE OF SERVICE

This is to certify that on January 7th, 2011, a true and correct copy of the Appellant's Brief was mailed by U.S. Mail, postage pre-paid, certified and return receipt requested, to the following parties of record:

Elizhalee K. (Hager) (Wilson) Cunningham
9017 211th Street Ct East
Graham, WA 98338

Monica Irene Labeck
Attorney at Law
949 Court E
Tacoma, WA 98402-5616

[Signature]