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COURT OF APPEALS
DIVISION II

2012 OCT 15 AM 9:51

NO. 43543-8-II STATE OF WASHINGTON

IN THE COURT OF APPEALS ~~BY~~ *CM*
OF THE STATE OF WASHINGTON ~~DEPUTY~~
DIVISION II

In re:

ERIC ALMOND,

Appellant,

And

PATRICIA ALMOND,

Respondent.

BRIEF OF APPELLANT

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INTRODUCTION

The parties entered a decree ending their 8 year marriage on April 30, 2007. That decree ordered Eric¹ to pay maintenance of \$1000 per month for two years and child support in the amount of \$967.66 per month. Daycare and pre-school expenses of \$429.55 was added to Eric's child support obligation. The total transfer payment was \$1397.21 each month.

From April 30, 2007 the daycare and preschool expenses were collected by the Division of Child Support even though these costs were not actually incurred. On October 17, 2007, Eric filed a petition to modify the child support, pro se, to remove these expenses from the transfer payment; however, the court denied his request because of his failure to follow the procedural rules. On January 30, 2008, a judgment in the amount of \$31,911.50 for unpaid child support and maintenance and "other consolidated judgments" were entered with the court.

¹ This brief refers to the parties by their first names to avoid confusion. No disrespect is intended by suing their names.

At a hearing on June 7, 2011, the court ordered that the parties attend mediation to resolve the invalid transfer of the un-incurred expenses. By this time, judgments had already been entered that included the amounts for these expenses, plus accrued interest. The parties agreed that the daycare and preschool costs should be removed from the existing the judgments. The disputed issue was whether the interest (and the precise amount) that accrued from those expenses should be removed.

At trial, the court ruled that the un-incurred daycare and preschool expenses should removed from the existing judgments (and the interests accrued) beginning January 2008 forward. The court failed to determine the validity of the judgment of \$31,911.50, entered on January 30, 2008, however. The court also ruled that the appropriate interest should be to the child support only after the un-incurred expenses were removed.

The trial court ordered the parties to calculate the new judgment amounts. Eric provided the court with an accounting of payments made by him since May 2007 and added interest of 12%

each month. (**Appendix A**). Patricia provided no accounting of payments or interest. The court adopted Patricia's proposed final orders. Patricia requested a judgment in the amount of \$59,757.20; Eric requested a judgment in the amount of \$ 29,114.38. Eric asks the court to re-examine the amount of interest that was added to the final judgments entered with the court dating back to April 30, 2007.

The trial court also failed to give Eric credit for his direct payment of \$2,872.66, to Patricia for her share of the TSP balance.

ASSIGNMENTS OF ERROR

1. The trial court erred in entering its order on past due child support, increasing Eric's judgments on past due child support obligation. CP 33.
2. The trial court erred in entering is order on past due judgments, denying him credit for TSP funds that were paid to Patricia. RP 10-11 (3/26/12)

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court abuse its discretion by its failure to account for payments of child support each month when computing the accrued interest from April 30, 2007 to March 2012.
2. Did the trial court abuse its discretion when it failed to provide a credit to Eric for his payment to Patricia for her share of the TSP payment.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

A. After the parties' divorce on April 30, 2007, Eric tried to adjust child support to remove the un-incurred daycare and preschool expenses.

The final order of support required Eric to pay \$1397.32 per month. \$429.55 of this amount was Eric's share of daycare and preschool expenses. RP 51-52 [3/1/2012].

On January 30, 2008, a judgment was entered against Eric for unpaid child support, maintenance daycare, and preschool expenses. RP 8-9 (3/26/12). This amount was \$31,911.50. *Id.* No clear breakdown of this judgment was provided. *Id.* It is not known whether interest was added to this amount. *Id.* It is not clear

whether payments made to Patricia from April 30, 2007 to December 2007 were considered by the court when entering this judgment. RP 8-9 (3/26/12).

After the entry of the final decree and child support order, a hearing was scheduled on June 7, 2011 to address Patricia's contempt motion for unpaid child support and expenses for daycare and pre-school. RP 9 (3/26/12). Patricia also addressed the payment of her share of the funds from the Thrift Savings Plan (TSP) awarded to her in the decree. RP 44 (3/1/12).

Two mediation sessions were held: (1) May 14, 2010 and (2) August 20, 2011, and the parties failed to reach an agreement on the new amounts for those judgments. RP 38-41 (3/1/12). The parties did not reach resolution on any issues as either mediation session. *Id.* The primary issue was the whether the Eric should be ordered to pay interest on the daycare and preschool expenses that were invalidly transferred to Patricia from April 30, 2007 to March 2012.

B. The trial court ruled correctly that the un-incurred daycare and pre-school expenses should be removed from Eric's past due child support obligation.

At trial, the court ruled that the judgments should be modified to reflect that no daycare or preschool expenses were incurred. It ordered the parties to follow its ruling and calculate the new judgment amounts. RP 10-11 (3/26/12).

"I'm going to make some Findings and I'll expect the parties to do the calculations and come back to Court with proposed orders." Id.

Specifically, it ordered that the judgment entered on January 30, 2008 was modified to remove the un-incurred expenses. *Id.* However, it clarified that the judgment should be \$33,483.08, not \$31,911.50. *Id.* It is now known how the court determined this amount. *Id.*

"So the judgment from January 30, 2008, needs to be recalculated for a total of \$33,483.08, which is taking away the un-incurred expenses, plus and appropriate interest amount that should have been awarded on those consolidated judgments at that time. And that figure should have interest added to it since January 30, 2008." RP 11 (3/26/12).

Eric asked the court whether he would be required to pay on the accompanying interest for the un-incurred expenses from April 2007 to December 2007. RP 12 (3/26/12). Because there was no breakdown of the January 30, 2008 judgment, it is not known whether Eric was ordered to pay this interest. *Id.*

The court ordered that the incurred expenses are removed from January 30, 2008 to March 2012, and that the appropriate interest is added to this amount. RP 11 (3/26/12).

“Child support from January 2008 until the present, through March 2012, 51 months have passed. At \$1,397.21 a month, that would be, by the Court’s calculation, \$71,257.71. There’s also the issue of un-incurred daycare and pre-school expenses for those 51 months, as well. The amount that should not have been included in the amount was \$429.55 for 51 months.” *Id.*

Finally, the court ordered that Eric pay unpaid maintenance left owing to Patricia. RP 12 (3/26/12). The court ordered that interest would begin accruing on the balance of the unpaid maintenance on the date of the entry of final orders. *Id.*

“During that time period from January 2008 to March 2012, per the DCS records that were admitted as Exhibit 11, father paid \$58,333.57, which results in an overpayment of \$8,249.55 on the child support. That amount should be credited against the amount that was owed for the maintenance. Interest should

not be awarded for the maintenance that was ordered because it was also being collected along with the child support. The balance of the maintenance that's owed can be reduced to judgment with interest being collected in the future on it. RP 12 (3/26/12)

C. The trial court ruled that there was no proof of payment of TSP funds to Patricia.

Patricia testified that she received approximately \$2800 from Eric for her share of the TSP funds. RP 19 (3/26/12) CP 10-12.

Mr. Fisher: ***"In regard to the Thrift Savings Plan, did you receive \$2,800 from Eric from the Thrift Savings Plan?"***

Patricia: ***"Yeah, close to that amount."*** RP 19 (3/26/12).

On cross-examination, Patricia testified that she had received half of the TSP funds through a cancelled money order and that the other half went toward the child support arrears. RP 44-45 (3/26/12).

Ms. Forrest: ***"You testified that you actually had received those TSP funds."*** *Id.*

Patricia: ***"I received the half, the actual check from Eric, it was admitted, I believe by him, a copy of the cancelled check."*** *Id.*

Ms. Forrest: ***"Do you recall when you received that check?"*** *Id.*

Patricia: ***"No, it was whatever the date on the check was. It showed I cashed it. I don't have the date memorized."*** *Id.*

Ms. Forrest: ***“Is there a reason why this amount was included in the judgment against Eric when you had received those funds?”*** RP 44-45 (3/26/12).

Patricia: ***“I believe it was the other half of the funds that were in question”*** *Id.*

The parties had a verbal agreement that the other half of the funds would go toward child support arrears. RP 45-46 (3/1/12). On August 15, 2007, Eric paid his share of the TSP funds of \$2,683.00 toward the child support arrears. RP 46 (3/1/12).

ARGUMENT

A. The trial court erroneously failed to consider the child support payments made each month when it calculated Eric’s past due child support judgment.

It is black letter law that child support installments are judgments for money, along with accrued interest, from the date the payments are due. “All judgments for unpaid child support that have accrued under a superior court order or an order entered under the administrative procedure act shall bear interest at the rate of twelve percent.” Wash. Rev. Code 4.56.110 (2). In re Marriage of Kruger, 37 Wn.app. 329, 332, 679 P2d 961 (1984).

Here, this case is simple. The court correctly ruled that unincurred expenses should be removed and that appropriate interest is added to existing child support. It adopted orders that failed to account for payments of child support each month. CP 28-30. As a result, it awarded Patricia interest on past due child support based for unpaid *and* paid child support. CP 34-36.

When the court made its ruling, it ordered the parties to calculate the new judgment amounts. RP 10 (3/26/12). Eric provided the court with a record of child support paid since May 2007. *Id.* (**Appendix A**). CP 28-30. He used the existing judgment amount from Decree as a starting point in calculating interest. *Id.* This amount was \$17,698.23.² Each month, interest is added to the unpaid child support only. RP 5 (4/27/12)

It is documented that interest is accrued monthly and that the amounts that are unpaid each month are added to the principal judgment amount. *Id.* (**Appendix A**), CP 28-30. From May 2007 to

² This amount is taken directly from the Decree of Dissolution. The base child support of \$967.66 is added each month to the judgment amount of \$17,698.23. Also included in Eric's calculation chart are the payments made by him each month. The amount that is paid each month is deducted from the judgments and interest is calculated only on the unpaid amounts remaining.

April 2012, \$57,091.94 in child support was owed. Eric paid a total of \$66,746.24 as of April 2012. RP 7 (4/27/12)

There is an existing balance from the judgment in the Decree and its remaining balance is \$14,768.68. This balance accounts for interest on the existing judgment and unpaid child support from May 2007 to April 2012. *Id.*

When the un-incurred expenses have been removed, Eric has an over-payment of \$9,654.30. (\$66,746.24 - \$57,091.94). *Id.* The final judgment on past due child support and judgment from the Decree is \$14,768.68. *Id.* The final judgment on the past due maintenance is (\$24,000 - \$9,654.30) \$14,345.70. *Id.*

B. The trial court failed to provide an accounting of judgments from April 30, 2007 to January 30, 2008.

Eric does not dispute the validity of the judgment entered on April 30, 2007. RP 6 (4/27/12). Eric disputes the validity of the judgment entered on January 30, 2008. RP 10 (3/26/12). He did not appear at this hearing and the record does not document the breakdown of this judgment. RP 10 (3/26/12). This order states

that it is comprised of past due maintenance and child support, and the existing judgment from the Decree. RP 10 (3/26/12). Still, the breakdown of this judgment is not clear. *Id.*

C. Eric should receive credit for the TSP funds paid to Patricia.

The Decree awarded Patricia her share of the parties' TSP funds. There was testimony by both parties about Patricia's receipt of TSP funds. RP 44-46 (3/1/12). A letter was admitted as evidence documenting that his share of the TSP proceeds went toward his back child support. (**Respondent's Exhibit 8.**) A copy of the cashier's check in the amount of \$2,872.66 that endorsed by Patricia was submitted to the court. (**Respondent's Exhibit 12.**) It was not admitted as evidence, but Patricia testified to receiving it. RP 46 (3/1/12).

CONCLUSION

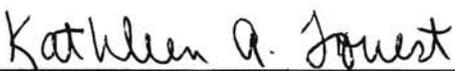
The Court should reverse the order of May 8, 2012 entering new judgments in favor of Patricia. The trial court correctly found

that un-incurred daycare and preschool expenses should be removed from the existing judgments and that the appropriate interest should be added to the child support obligation. The trial court should go beyond the January 30, 2008 order, and account for the past due child support from April 30, 2007. The court should give Eric credit for the TSP funds of \$2,872.66 that was paid directly to Patricia.

The Court should order that only interest on unpaid child support is accrued. It should adopt Eric's final judgments amounts of \$14,768.68 for unpaid child support and \$14,345.70 for unpaid maintenance. The total for both judgments since April 2012 should be \$29,114.38.

RESPECTFULLY SUBMITTED this 15 day of October, 2012.

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CERTIFICATE OF SERVICE

I certify that on 15th day of October, 2012, I caused a true and correct copy of this **Appellant's Brief** to be served on the following in the manner indicated below:

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Month	Principal	Child Support	No of Days	Interest	Princi + Int	Payment	Balance
May-07	\$17,698.23	\$967.66	30	\$0.00	\$18,665.89	0	\$18,665.89
Jun-07	\$18,665.89	\$967.66	30	\$184.10	\$19,817.65	0	\$19,817.65
Jul-07	\$19,817.65	\$967.66	31	\$201.98	\$20,987.29	\$32.70	\$20,954.59
Aug-07	\$20,954.59	\$967.66	31	\$213.56	\$22,135.81	\$2,681.16	\$19,454.65
Sep-07	\$19,454.65	\$967.66	30	\$191.88	\$20,614.20	\$1,474.07	\$19,140.13
Oct-07	\$19,140.13	\$967.66	31	\$195.07	\$20,302.86	\$1,094.59	\$19,208.27
Nov-07	\$19,208.27	\$967.66	30	\$189.45	\$20,365.38	\$1,101.09	\$19,264.29
Dec-07	\$19,264.29	\$967.66	31	\$196.34	\$20,428.29	\$2,906.62	\$17,521.67
Jan-08	\$17,521.67	\$967.66	30	\$172.82	\$18,662.14	\$1,713.41	\$16,948.73
Feb-08	\$16,948.73	\$967.66	29	\$161.59	\$18,077.99	\$1,595.85	\$16,482.14
Mar-08	\$16,482.14	\$967.66	31	\$167.98	\$17,617.78	\$1,497.44	\$16,120.34
Apr-08	\$16,120.34	\$967.66	30	\$159.00	\$17,246.99	\$1,709.82	\$15,537.18
May-08	\$15,537.18	\$967.66	30	\$153.24	\$16,658.08	\$2,961.44	\$13,696.64
Jun-08	\$13,696.64	\$967.66	30	\$135.09	\$14,799.39	\$1,806.28	\$12,993.11
Jul-08	\$12,993.11	\$967.66	31	\$132.42	\$14,093.19	\$3,266.39	\$10,826.80
Aug-08	\$10,826.80	\$967.66	31	\$110.34	\$11,904.81	\$1,646.28	\$10,258.53
Sep-08	\$10,258.53	\$967.66	30	\$101.18	\$11,327.37	\$1,617.83	\$9,709.54
Oct-08	\$9,709.54	\$967.66	31	\$98.96	\$10,776.16	\$1,505.97	\$9,270.19
Nov-08	\$9,270.19	\$967.66	30	\$91.43	\$10,329.28	\$1,617.03	\$8,712.25
Dec-08	\$8,712.25	\$967.66	31	\$88.79	\$9,768.70	\$1,627.01	\$8,141.69
Jan-09	\$8,141.69	\$967.66	30	\$80.30	\$9,189.65	\$2,236.84	\$6,952.81
Feb-09	\$6,952.81	\$967.66	28	\$64.00	\$7,984.48	\$1,456.12	\$6,528.36
Mar-09	\$6,528.36	\$967.66	31	\$66.54	\$7,562.55	\$1,420.92	\$6,141.63
Apr-09	\$6,141.63	\$967.66	30	\$60.58	\$7,169.87	\$1,072.43	\$6,097.44
May-09	\$6,097.44	\$967.66	30	\$60.14	\$7,125.24	\$0.00	\$7,125.24
Jun-09	\$7,125.24	\$967.66	30	\$70.28	\$8,163.17	\$721.39	\$7,441.78
Jul-09	\$7,441.78	\$967.66	31	\$75.85	\$8,485.29	\$1,295.64	\$7,189.65
Aug-09	\$7,189.65	\$967.66	31	\$73.28	\$8,230.58	\$1,274.70	\$6,955.88
Sep-09	\$6,955.88	\$967.66	30	\$68.61	\$7,992.15	\$1,409.67	\$6,582.48
Oct-09	\$6,582.48	\$967.66	31	\$67.09	\$7,617.23	\$1,479.27	\$6,137.96
Nov-09	\$6,137.96	\$967.66	30	\$60.54	\$7,166.16	\$1,503.85	\$5,662.31
Dec-09	\$5,662.31	\$967.66	31	\$57.71	\$6,687.67	\$1,779.36	\$4,908.31
Jan-10	\$4,908.31	\$967.66	30	\$48.41	\$5,924.39	\$1,317.02	\$4,607.37



Feb-10	\$4,607.37	\$967.66	28	\$42.41	\$5,617.44	\$1,695.75	\$3,921.69
Mar-10	\$3,921.69	\$967.66	31	\$39.97	\$4,929.32	\$1,497.20	\$3,432.12
Apr-10	\$3,432.12	\$967.66	30	\$33.85	\$4,433.63	\$1,400.00	\$3,033.63
May-10	\$3,033.63	\$967.66	30	\$29.92	\$4,031.21	\$1,400.00	\$2,631.21
Jun-10	\$2,631.21	\$967.66	30	\$25.95	\$3,624.82	\$700.00	\$2,924.82
Jul-10	\$2,924.82	\$967.66	31	\$29.81	\$3,922.29	\$700.00	\$3,222.29
Aug-10	\$3,222.29	\$967.66	31	\$32.84	\$4,222.79	\$700.00	\$3,522.79
Sep-10	\$3,522.79	\$967.66	30	\$34.75	\$4,525.20	\$700.00	\$3,825.20
Oct-10	\$3,825.20	\$967.66	31	\$38.99	\$4,831.84	\$700.00	\$4,131.84
Nov-10	\$4,131.84	\$967.66	30	\$40.75	\$5,140.25	\$317.00	\$4,823.25
Dec-10	\$4,823.25	\$967.66	31	\$49.16	\$5,840.07	\$1,152.00	\$4,688.07
Jan-11	\$4,688.07	\$967.66	30	\$46.24	\$5,701.97	\$380.00	\$5,321.97
Feb-11	\$5,321.97	\$967.66	28	\$48.99	\$6,338.62	\$0.00	\$6,338.62
Mar-11	\$6,338.62	\$967.66	31	\$64.60	\$7,370.88	\$161.61	\$7,209.27
Apr-11	\$7,209.27	\$967.66	30	\$71.11	\$8,248.04	\$489.17	\$7,758.87
May-11	\$7,758.87	\$967.66	30	\$76.53	\$8,803.05	\$411.78	\$8,391.27
Jun-11	\$8,391.27	\$967.66	30	\$82.76	\$9,441.70	\$382.19	\$9,059.51
Jul-11	\$9,059.51	\$967.66	31	\$92.33	\$10,119.50	\$707.69	\$9,411.81
Aug-11	\$9,411.81	\$967.66	31	\$95.92	\$10,475.39	\$0.00	\$10,475.39
Sep-11	\$10,475.39	\$967.66	30	\$103.32	\$11,546.37	\$0.00	\$11,546.37
Oct-11	\$11,546.37	\$967.66	31	\$117.68	\$12,631.71	\$1,113.22	\$11,518.49
Nov-11	\$11,518.49	\$967.66	30	\$113.61	\$12,599.76	\$556.61	\$12,043.15
Dec-11	\$12,043.15	\$967.66	31	\$122.74	\$13,133.55	\$556.61	\$12,576.94
Jan-12	\$12,576.94	\$967.66	30	\$124.05	\$13,668.65	\$556.61	\$13,112.04
Feb-12	\$13,112.04	\$967.66	29	\$125.01	\$14,204.71	\$556.61	\$13,648.10
Mar-12	\$13,648.10	\$967.66	30	\$134.61	\$14,750.37	\$490.00	\$14,260.37
Apr-12	\$14,260.37	\$967.66	30	\$140.65	\$15,368.68	\$600.00	\$14,768.68
		\$57,091.94		\$5,616.43		\$66,746.24	