
THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

DEON A. LADSON

Appellant

Vs.

PRISCILLA E. MAXEY

Respondent

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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
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Case#43733-3-II

BRIEF OF APPELLANT

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A. SUMMARY OF ARGUMENT

Deon A. Ladson appeals the Honorable Judge Orlando's June 29, 2012 denial of my Motion for Reconsideration (CP 134-144). This Order on Reconsideration incorporates Judge Orlando's Order on Child Support entered on May 29, 2012 (CP-103-127).

The portions which I am appealing are:

1. the failure of Judge Orlando to order mandatory long-distance cost, to be apportioned per Child Support Worksheet (CP 114-115) and (CP 124)
2. the order that I pay private school tuition, without following public-policy factors (CP 102), (CP 109), (CP 114) (CP 124)
3. ordering daycare in the transfer payment instead of allowing me to pay my apportionment directly to the provider (CP 102), (CP 108-110), (CP 124)
4. the failure of Judge Orlando to calculate my income consistent with the law and coming up with incorrect proportionate adjustment (CP 102), (CP 106-107), (CP 123-126)
5. the failure to deviate on the basics calculation due to Ladson having other children (CP 110-111) .
6. misrepresenting the Petitioner by placing Ms Maxey as such, when I am the Petitioner, (CP 103), (CP 112), (CP 135).

7. all Transportation is suppose to be paid by Ms Maxey according to (CP 114)

B. ASSIGNMENT OF ERROR

1. The trial court erred in ignoring RCW 26.19.080 and 26.09.105 not ordering proportional obligations for: (1) daycare; (2) long-distance transportation; (3) extraordinary healthcare in (CP 135), (CP 114-115), (CP 119).
2. The trial court abused its discretion by ordering daycare and school tuition to unnecessarily be included in the transfer payment, (CP 102), (CP 124).
3. The trial court erred by ordering the father to pay private school tuition (CP-102), (CP 109, 124), (CP 134, 136).
4. The trial court erred by not considering or making finding regarding, the public-policy factors for ordering private school tuition (CP-102), (CP 109, 124), (CP 134, 136).
5. The trial court erred by not ordering the father's actual income completely changed (CP 135, 136).
6. The trail court erred by ignoring RCW 26.09.071(4), (e) and (f), when determining the father's income (CP 4, 15,19,20,36) (CP 135,136).

7. The trial court erred by not deviating under RCW 26.19.075 from the basic calculation of child support due to the father having a duty of support to other children (CP 12), (CP 110-111), (CP 135), (CP 142).

C. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. Should this Court reversed the Order of Child Support and mandate the trial court to recalculate and enter father's actual income and adjust the proportionate share based upon RCW 26.09.071(4)(e)(f) (CP 4,15,19,20,36) (CP 135,136)? [pertains to Assignments of Error 5 and 6]
2. Should this court vacate and/or reverse the trial court's Section 3.15 and 3.19 of the Order of Child Support (CP 114,115,119) and mandate that the trial court entered 50% proportional obligations for long-distance transportation, uninsured medical and daycare? [Pertains to Assignment of Error 1 and 2]
3. Should this court vacate transfer payment and any previous provisions that require the father to pay private school tuition (CP-102), (CP 109, 124), (CP 134, 136)? [Pertains to Assignments of Error 2,3 and 4]

4. Should the court remand/mandate the trial court to deviate from the basic calculation, based upon other children the father owes a duty of support to CP 12), (CP 110-111), (CP 135), (CP 142)? [Pertains to the assignment of Error 7]

D. STATEMENT OF THE CASE

On December 16, 2011, the parties settled on a Final Parenting Plan (CP 97) (CP 114) on that Parenting Plan states that the parties shall share transportation expenses per the Child-Support Worksheets.

The Honorable James Orlando entered a final order (CP 103-127) which;

(1) ordered the father to pay private school tuition and day care and simply added those expenses into the transfer payment with the incorrect proportionate adjustment (CP 102), (CP 109), (CP 124)

(2) made no provisions for extraordinary expenses of uninsured medical costs and long distance transportation (CP 124) in section 3.15 (CP 114,115) (it should be paid by the Respondent) and 3.19 (CP 119) and did not cite the proportional burden for daycare (CP 124)

(3) considered all the father's sources even though they were all under the category of Aged, Blind and Disabled assistant benefits and total is incorrect under RCW26. 19. 071(4) (e) and (f) (CP 123)

(4) failed to deviate from the basic calculation even though the father has a duty of support to another child CP 12, CP 110-111, CP 135, CP 142

(5) found that there was \$200 total cost for day care \$659 total cost for private school tuition, (CP 102), (CP 124), but the total amount came up to a \$1,000.00 a month, (CP 109) plus what the respondent is receiving from Social Security was \$234.00 now \$360.00, which totals to then 1234.00 (CP 110) and now \$1360.00 a month for one child with the incorrect income input, incorrect proportional adjustments, unauthorized expenses and no deviations and Deon A. Ladson filed a Motion for Reconsideration (CP 134-144). Judge Orlando denied that motion.

Deon A. Ladson appeals.

E. ARGUMENT

1. Deon Ladson's income was calculated improperly (CP 136)

All three sources of my income are under the category of age and disable assistant benefits and supplementary security income. They are not and cannot be considered gross income under RCW 26.19.071(4) (e) and (f)

If the court would have wished to impute income upon me, it cannot do so under .071(6) because I am unemployable.

The court abused its discretion and ignored the law.

2. The award of private school tuition was entered on a whim, without consideration of public policy (CP 136)

There was no petition or counter-petition or responsive claim in the record for private school. That alone is reversible error. But, the public policy factors for private school were not followed, nor considered. I informed the court on

reconsideration of the following policies, so the court had a chance to make findings on the record for a basis for private school and the court did not. The order of private school tuition should be reversed.

Where acceptable public schools are available, and there is no showing of special circumstances justifying the **need** for private school education, the noncustodial parent should not be obligated to pay for the private education of his or her minor children. In re Marriage of Stern, 57 Wn. App. 707, 720, 789, P.2d 807(1990).

In considering whether to order payment of private school tuition, the trial court should consider **all relevant** factors. Including "family-tradition, religion and past attendance at a private school." Id and In re marriage of Vander Veen, 62 Wn. App. 861, 866, 815P.2d 843 (1991).

The mother did not even attempt to make any statement or provide any proof of the record as to

what factors applied to the child and what basis, if any, there was to award payment of private school tuition. She simply told the judge that the child was in private school. And I was subsequently ordered to pay 65.9% of those costs pursuant the worksheets--which is an improper percentage because \$4,834.92 is not my income.

3. The Court was required by mandatory law (with no exceptions) to order that each parent pay their proportional share of of extraordinary child support expenses (CP 137)

(a) What the trial court found and ordered

The court made no finding of any of these three mandatory expenses except for daycare in the Child Support Worksheets. But, the court simply put the \$200 of alleged daycare into the calculation. The Order of Child Support has no percentage breakdown and there was no evidence before the court as to actual daycare expenses.

It is puzzling that in the Order of Child Support Section 3.19, the percentages are blank. Courts always enter percentages in this section for unsecured medical costs. Also the mother refuses to put the child on the father medical insurance. Section 3.15 makes no apportionment for daycare and long-distance travel costs.

(b) The law states extraordinary support is a mandatory obligation shared proportionately by the parties. (CP 137)

RCW 26.19.080 (3) reads:

(3) **Day care** and special child rearing expenses, such as tuition and **long distance transportation** costs to and from the parents for visitation purposes, are not included in the economic table. These expenses **shall be shared by the parents in the same proportion** as the basic child support obligation

RCW 26.19.080 (2) reads:

"(2) Health care costs are not included in the economic table. Monthly health care costs **shall be shared by the parents in the same proportion as the basic child support obligation**. Health care costs shall include, but not be limited to medical, dental, orthodontia, vision, chiropractic, mental health treatment, prescription medication and other similar costs for care and treatment."

"Extraordinary health care expenses are an additional amount of child support to be apportioned between the parents." In re Marriage of Daubert, 124 Wn App. 483, 494, 99 P.3d 401(2004).

RCW 26.09.105 reads in pertinent part:

"Child support - Medical support - Conditions."

(1) Whenever a child support order is entered or modified under this chapter, **the court shall require both parents to provide medical support** for any child named in the order as provided in this section.

(a) Medical support consists of:

(i) Healthcare insurance coverage,
and

(ii) Cash medical support

(b) Cash **medical support consists of**

(i) A parents monthly payment towards the premium paid for coverage by either the other parent or the state, which represents the obligated parent's proportionate share of the premium paid, but no more than twenty-five percent of the obligated parent's basic support obligation, and

(ii) A parent's **proportionate share of uninsured medical expenses.**

(c) Under **appropriate** circumstances, **the court may excuse** one parent from the responsibility to provide health insurance coverage or the monthly payment toward the premium.

(d) The **court shall ALWAYS require BOTH parents** to contribute their **proportionate** share of **uninsured medical expenses**.

(4) (a) If there is sufficient evidence provided at the time the order is entered, the court may make a determination of which parent must provide coverage and which parent must contribute a sum certain amount as his or her monthly payment toward the premium.

(b) If **both parents have available health insurance coverage** that is accessible to the child at the time support order is entered, the court has discretion to order the parent **with better coverage** to provide the health insurance coverage for the child and the other parent to pay a monthly payment toward the premium in making the determination of which coverage is better, the court shall consider the needs of the child, the cost and extent of each parents coverage, and the accessibility of the coverage.

(c) Each parent **shall remain responsible** for his or her **proportionate share** of uninsured medical expenses.

(5) The order must provide that **if the parties circumstances change**, the parties medical support obligations will be enforced as provided in RCW 26.18.170....

(16) as used in this section:

(f) Proportionate share means an amount equal to a parents percentage share of the combined monthly net income of both parents as computed when determining a

parents child support obligation under Chapter 26.19
RCW.

The Legislature used words like "shall" and "always" regarding these three categories of child support.

The trial court created an exception where the law says "always."

The trial court cited no authority for this exception (even if the trial court was right in finding this case is "singular".)

But, the law is clear and the court is not entitled to reinterpret a statute when the language is unambiguous.

"When interpreting a statute, we do not construe a statute that is unambiguous, but rather assume that the legislature means **exactly what it says**. Plain words do not require construction." In re Marriage of Scanlon. 109 Wn. App.167, 173, 34P.3d 877 (2001).

In re Marriage of Goodell, 130 Wn. App.381, 122 P.3d 929

(2005) reads:

"It is well settled that parents **cannot** avoid their child support **obligations** by mere agreement. The agreement is **void** as against the strong public policy articulated by the legislature that all parents have a duty to support their children. See RCW 26.19.001, .011, .020 Pollard, 99 Wn. App. At48"

"Obligations" above is plural. So, this does not only apply to the basic obligation, but also the extraordinary ones.

Parties cannot even AGREE to deviate away from this mandatory Law.

In Goodell, The trial court order required the father to pay 100% of all extraordinary health care costs. This was agreed. Division Two reversed and remanded some of the Order of Child Support and specifically ordered that extraordinary healthcare be apportioned between the parties. (Goodell at 393 and 395).

The Goodell appellate court cited RCW 26.19.080(1) and (2) and held:

"extraordinary healthcare costs are costs....are allocated to each parent in the same proportion as their basic support obligations....

.....When the court refused to impute any income to Cathie. It also extinguished Cathie's obligation to share in payment of extraordinary health care costs. Since the court erred in not imputing income to Cathie, It is necessary erred by requiring Scott to pay 100% of the extraordinary health care cost.....

.....We reversed the Superior Court's child support order and remand for a new calculation of child support with a proportionate allocation of health care expenses.....since the date Scott filed his petition to modify or adjust child-support..... Id. at 393, 395.

Division One specifically vacated a father's obligation to pay 100% of his own long distance transportation costs.

Murphy v. Miller, 85 WN. App. 345, 932 P.2d 722 (1997).

The Court held as follows:

"Once the court determines that the costs are necessary and reasonable, the parties must share them in the same proportion as the basic support obligation.....Because this provision is mandatory, we and the trial court must enforce it. To hold otherwise would render the language in the statute meaningless. This portion of the court's decision is vacated Id at 349."

Division One made another Similar reversal of 100% transportation costs order to the father in In re Yeamans, 117 Wn.App. 593, 600, 72 P.3d 775 (2003).

(c) The only possible exception (deviation) was not an order of the court

The only possible exception to all of the mandatory law above is if the trial court would have ordered a deviation. No deviation was ordered and none was requested.

Once again, the Division One Court has spoken:

"The pertinent statute requires that" long-distance transportation costs.....shall be shared by the parents in the same proportion as the basic child support obligation RCW 26.19.080(3); In re Marriage of Scanlon and Witrak, 109 Wn. App. 167, 181, 34, P.3d 877 (2001) (without any deviation, the statute allows no room for a court to exercise discretion and allocation of it of expenses); In re Marriage of Casey, 88 Wn. App. 662, 667, 967 P.2d 982 (1997).(if there are statutory grounds for deviation from basic support obligation, the court may depart from the usual practice of allocating special child-rearing expenses)

4. A deviation was warranted due to other children (CP 142)

I have other children to home I old duty of support.

Whether or not I have an official Order of Child Support is irrelevant. I actually send gifts when I can to all my children.

RCW 26.19.075(1) reads:

"(1)Reasons for deviation from the standard calculation include on but are not limited to the following...

...**(d) Children from other relationships.** The court may deviate from standard calculation when either or both of the parents before the court have other children from other relationships to whom the parent owes a duty of support."

A "'duty of support' means- all support obligations, not merely payment of court ordered child-support." In re Marriage of Choate, 242 Wn. APP. 235, 177 P.3d 175 (2008), quoting Fernando v Nieswandt, 87 Wn. APP.103,111,940 P.2d 1380 (1997).

Law and Public policy states that each parent has a duty to perform the parenting function of paying financial support.

RCW 26.09.002 reads in part:

Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of the minor children...Residential time and financial support are equally important components of parenting arrangements.....

RCW 26.09.004 reads in part:

(2)"Parenting functions" means those aspects of parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child. Parenting functions include:

(d) providing for the financial support of the child"

So, Judge Orlando's Order of Child Support gives no consideration for the other children I owe duty of support for. The transfer payment of \$1000 takes money away from the other children and puts me in a financial bind to support myself.

The court has concern for ALL the children and it is REVERSIBLE error to order a draconian amount of child support to one of the children depriving the others of any possible funding/financial support or limiting that funding.

5. Abuse of Discretion

Stare decisions as part of our common law state in order to create predictability or guidance in the law, contributing to integrity of the judicial process, saving needless litigation. State of Washington v. Danny J Barber, Jr. 170 Wn.2d 854, 863, 248 P.3d 494 (2011).

The public policy governing this appeal is clearly mandatory, and because I thoroughly cited the RCW and case law with my Motion for Reconsideration, it should have been a mere formality to enter percentages for mandatory extraordinary expenses. But Judge Orlando abused his discretion and wanted to usher us in and out of court quickly.

"A trial court abuses its discretion when its decision or order is manifestly unreasonable, exercised on untenable grounds or exercised for untenable reasons. An error of law constitutes an untenable reason." In re Marriage of Farmer, 259 P.3d 256, (2011) Wash. Lexis 670, Supreme Court

No.83960-3 (filed September 8, 2011) at Headnote 1;(citing, Noble v. Safe Harbor Family Pres. Trust, 167 Wn.2d 11, 17, 216, P.3d 1007 (2009)).

The plain, clear, unambiguous laws regarding income and extraordinary expenses are clear enough to warrant a finding that Judge Orlando abused his discretion public policy on private school tuition is just as clear.

This court reviews child-support orders for manifest abuse of discretion. In re Marriage Booth and Griffin, 114 Wn.2d, 772, 776, 791 P.2d 519 (1990).

"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; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard."

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

F. CONCLUSION

- The trial court abused its discretion by ignoring mandatory law and not allocating extraordinary child-rearing expenses.
- Trial court abused its discretion by assigning me an income that is not permitted under the law for an unemployable person which in turn increased the proportional share of income.
- The trial court ordered me to pay private school tuition when no Stern or Vander Veen factors were present, not even alleged.
- A certain amount (instead of percentage) of daycare was ordered despite there being no evidence, other than prima facie allegations.
- Private school and day care costs were factored into the Standard Calculation and therefore into the transfer payment. They should not have been. The former should not exist. The latter should be a **percentage**, payable directly to the provider. The court made no finding as to why enforcement of daycare transfer was necessary,

when the allotted amount of child support is being distributed to her every month.

- The court should have deviated on the basic calculation due to other children.
- Being that there is a lot of problems with the Current Parenting Plan Request (CP 94-101) that the Plan be looked at again and revised.
- Request that no back payment of any kind be recouped, due to the fact that I current on all payment and she is receiving Social Security Benefits.
- Based on all of the facts that these decisions were made at a whim to get me through the court system, I am requesting a new Judge to make the final decisions on these matters so that a fair decision can be rendered.

Respectfully submitted January 24th 2013,



Deon A. Ladson Sr.

Certificate of Service

I Deon A. Ladson, the appellant hereby declare under penalty of perjury under the law of the State of Washington that I caused true and correct copy of this appellant opening brief and the clerk's papers to be deposited into the US federal Mail System via prepaid first class certified envelope. The said documents were caused to be delivered to the interested party below at the address listed below.

1. Priscilla E. Maxey
502 North J. St Apt F
Tacoma, WA 98403

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

Date this 11th day of February, 2013.

A handwritten signature in black ink, appearing to read 'D. A. Ladson', is written over a horizontal line.

Deon A. Ladson

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