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COURT OF APPEALS
DIVISION II

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No. 47037-3-II

STATE OF WASHINGTON

BY 
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COURT OF APPEALS,
DIVISION II,
OF THE STATE OF WASHINGTON

In re the Parenting and Support of:

K.J.W., Child,

GLENDRA RAE TOMES, Respondent,

and

DONALD RANDY WALLACE, Appellant.

APPEAL FROM THE SUPERIOR COURT

OF LEWIS COUNTY

Cause No. 12-3-00305-1

REPLY BRIEF OF RESPONDENT

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I. INTRODUCTION

Following trial to determine child custody and support of K.J.W., a child of Glenda Rae Tomes and Donald Wallace. Donald Wallace filed a CR 60(b) motion for relief from the judgment and to vacate the Order. No appeal was filed after the trial nor was a CR 59 motion made for a new trial, reconsideration, or amendment of judgment filed. The CR 60(b) motion which was filed three months after trial, was denied, found to be frivolous, not grounded in fact, not warranted by existing law, and \$1500.00 was assessed against both Donald Wallace and his legal representative, James Nelson.

It is respectfully requested that this Court uphold the dismissal of the CR 60(b) motion, uphold the sanctions imposed by the Lewis County Superior Court and to note the frivolous nature of this action and impose new sanctions.

II. ASSIGNMENTS OF ERROR

A. ASSIGNMENTS OF ERROR

1. The trial court did not err when it denied Mr. Wallace's CR 60(b) motion.
2. The trial court did not err in the manner it evaluated the evidence presented.

3. The trial court did not err when it imposed sanctions against Mr. Wallace and Mr. Nelson.

B. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Whether the Trial Judge abused his discretion in the denial Mr. Wallace's CR 60(b) motion?
2. Whether the Trial Judge abused his discretion in the imposition of sanctions against Mr. Wallace and Mr. Nelson?

III. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

On August 22, 2012, a Petition for Residential Schedule/ Parenting Plan/ Child Support was filed in Washington State regarding Keyton Wallace (KJW). CP 1. Trial commenced on May 14, 2014. RPI 3. Upon conclusion of trial, the court entered Findings of Fact and Conclusions of Law granting Ms. Tomes primary custody and ordering child support on June 6, 2014. CP 152-190. Mr. Wallace did not file an appeal after the conclusion of trial, nor did he file a CR 59 motion. Mr. Wallace's attorney stated that "10 days is too short a time [to file a CR 59 motion]." CR 60(b) Motion Hearing, 9.

More than three months later, on September 19, 2014 Mr. Wallace filed a motion under CR 60(b) seeking to vacate the Orders entered on

June 6, 2014. CP 191-205. The Trial Court denied the CR 60(b) motion and found:

- 1) the Superior Court had jurisdiction over the subject matter of the litigation;
- 2) RCW Chapter 26.26 was the proper Chapter under which to commence the action;
- 3) at the time of trial, the Court took into consideration all the testimony and exhibits in calculating the income of Mr. Wallace;
- 4) there was no fraud nor misrepresentation in the matter and any blanks on the child support worksheets were not material and would not affect the calculation of child support;
- 5) Mr. Wallace's attorney approved the child support worksheets;
- 6) none of the allegations in Mr. Wallace's motion were supported by the evidence presented in this case;
- 7) Mr. Wallace's motion was frivolous and not well grounded in fact or warranted by existing law and was brought for the improper purpose of harassing Ms. Tomes and increasing the cost of litigation;
- 8) no irregularity or any other reason justified setting aside the Orders, and;
- 9) that the motion was not timely as all of the allegations made by Mr. Wallace were known to him at the time final Orders were entered.

Order on CR 60(b) Motion, 2. The Trial Court additionally imposed sanctions of \$1,500 on both Mr. Wallace and his Attorney. Order on CR 60(b) Motion, 3. Mr. Wallace timely filed his Notice of Appeal of the CR 60(b) Motion dismissal on December 24, 2014. CP 214-215.

IV. ARGUMENT

A. THE TRIAL JUDGE DID NOT ABUSE HIS DISCRETION IN THE DENIAL OF MR. WALLACE'S CR 60(b) MOTION BECAUSE ANY ALLEGED MISREPRESENTATIONS SHOULD HAVE BEEN ADDRESSED AT TRIAL AND THERE WERE NO IRREGULARITIES IN OBTAINING THE ORDER

CR 60(b)(1) provides that a court may relieve a party or his personal representative from a final judgment or order for irregularities in obtaining the judgment or order. Irregularities which can be considered on a motion to vacate a judgment are those relating to want of adherence to some prescribed rule or mode of proceeding. *In the Matter of the Guardianship of Cora Adamec*, 100 Wn.2d 166, 173, 667 P.2d 1085 (1983). Relief may be provided and a final judgment or order be vacated due to fraud, misrepresentation, or other misconduct, as well as for any other reason justifying relief. CR 60(b)(4), (b)(11).

A trial court's decision to vacate a judgment or order under CR 60(b) is reviewed for abuse of discretion. *See State v. Santos*, 104 Wn.2d 142, 702 P.2d 1179 (1985). "A court abuses its discretion when it bases its decision on untenable grounds or untenable reasons." *In re Marriage of*

Bostain, 127 Wn.App. 1029 (Division 2, 2005); *Lockett v. Boeing Co.*, 98 Wn.App. 307, 309, 989 P.2d 1144 (1999). “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. *State v. Rundquist*, 79 Wn.App. 786, 793, 905 P.2d 922 (1995) (citing Washington State Bar Ass’n, Washington Appellate Practice Deskbook § 18.5 (2d ed.1993)).

1. No misrepresentation was made to the Trial Court as to the correct law to be used during the proceedings and any disagreement about the law should have been addressed at trial.

Black’s Law Dictionary defines the word misrepresentation as the act or an instance of making a false or misleading assertion about something, with the intent to deceive or an assertion that is not in accord with the facts. The Appellant stated that “the significance of filing [Ms. Tome’s] petition under the wrong statute cannot be understated – as it amounted to the first of several misrepresentations to the trial court.” Brief of Appellant, 9. Here, there was no misrepresentation about the correct law to be used, only a clear misunderstanding of the applicable law by the Appellant.

This case was commenced under Chapter 26.26 RCW – which is the correct statute for making a residential schedule, parenting plan, or establishing a child support obligation. RCW 26.26.031 gives the Superior Courts of Washington authorization to adjudicate parentage under this chapter.

“After the period for rescission of an acknowledgment of paternity provided in RCW 26.330 has passed, a parent executing an acknowledgement of paternity of the child named therein may commence a judicial proceeding for: ***Making residential provisions or a parenting plan*** with regard to the minor child on the same basis as provided in chapter 26.09 RCW; or ***Establishing a child support*** obligation under chapter 26.19 RCW and ***maintaining health insurance coverage*** under RCW 26.09.105.”

RCW 26.26.375 (1)(a), 1(b).

Chapter 26.09 RCW does not apply because the parties were never married and chapter 26.10 does not apply because the parties to the action are parents of the minor. *See* RCW 26.09, RCW 26.10, Order on CR 60 Motion 2.

Appellant argues that chapter 26.12 RCW governs the matter and that it should have been brought in Family Court. RP 40. A family court proceeding under chapter 26.12 RCW is:

“Any proceeding under this title or any proceeding in which ***the family court is requested*** to adjudicate or enforce the rights of the parties or their children regarding the determination or modification of parenting plans, child custody, visitation, or support, or the distribution of property or obligations.”

RCW 26.12.010.

There is no statute in Chapter 26.12 RCW that deals with the subject matter of this action nor are there any mandatory forms adopted by the Administrative Office of the Courts that refer to Chapter 26.12 RCW on this subject. Additionally, even if Lewis County did in fact have a separate family court, there was no such request to adjudicate the matter there, and still, a Superior Court Judge would have presided over the trial anyway. *See* RCW 26.12.010. If the Appellant wished to bring the action elsewhere, he should have addressed that issue at or before trial. Lastly, it is clear that the attorney for the Appellant at the CR 60(b) motion did not understand the relevant law and made no substantive argument for why chapter 26.26 was the incorrect law, nor why the trial before a Superior Court Judge was in any way prejudicial or improper. *See* CR 60(b) Motion Hearing.

THE COURT: Do you agree that this case was about a residential schedule, a parenting plan; that's what this whole case is about?

MR. NELSON: That's correct, Your Honor.

THE COURT: But the procedures for setting out a parenting plan are found in 26.09, 26.10, and 26.26, correct?

MR. NELSON: Correct

THE COURT: He cannot proceed under 26.09, can he, because these parties were never married, correct?

MR. NELSON: That's correct, and they never lived together...

THE COURT: 26.10 is the nonparental custody...But that doesn't apply here, because this is not nonparental. These are both the parents, correct?

MR. NELSON: That's correct.

THE COURT: That leaves us with 26.26, which is an action – a chapter for determining parentage and for determining parenting plans for parents who are not married, correct?

MR. NELSON: I disagree, Judge Lawler.

CR 60(b) Motion Hearing 6,7.

2. The alleged misrepresentation that Ms. Tomes stated she was unaware of any other legal proceedings concerning the child was alleviated at trial by her testimony.

It is alleged that Ms. Tomes stated in her Petition for Residential Schedule/Parenting Plan/Child support filing that she had not been involved in any other legal proceedings concerning the child, K.J.W. However, this issue was in fact raised at trial and brought to the Court's attention. *See* 164-166. Therefore, any possible misrepresentation contained in her residential petition was alleviated by Ms. Tomes at trial by stating her knowledge of the criminal action (case No. 12-8-00013-1) filed against K.J.W.

The court as well as both parties were well aware of the criminal case involving KJW as it was discussed in depth by multiple witnesses, including Ms. Tomes. *See* RPI 47-105, 164-166, RPII 342-364. Also what

is significant of course is that the proceedings involving KJW was a criminal matter. Being a criminal case Ms. Tomes was not a party to the matter and therefore her statement in the petition was accurate. RPI 164. The Appellant was certainly even more significantly tied to the matter since all of the instances of molestation by KJW took place at his house. RPI 47. Since the court was well aware of the matter as well as the SSODA program in which KJW was enrolled, there is no prejudice to the Appellant. Furthermore, the Appellant has presented no argument that he was in any way prejudiced, even after reading the trial transcript.

3. The "incomplete" Washington State Child Support Schedule Worksheets were not a misrepresentation to the court because the "blanks" were incorporated by testimonial reference and any disagreements should have been raised at during trial.

In an action brought under Chapter 26.26 RCW, the parties shall comply with the requirements provided in RCW 26.18.220 for submission of forms to the court. RCW 26.26.065. A party may delete unnecessary portions of the forms according to the rules established by the administrative office of the courts as well as supplement with additional information. RCW 26.18.220(2). A party's failure to use the mandatory forms or follow the format rules shall not be a reason to dismiss the case. RCW 26.18.220(3).

- a. Part I, Section 2(h) of the child support worksheet and the lack of an entry for deductions under “father.”

Section 2(h) of the current Washington State Child Support Worksheet is titled “Normal Business Expenses.” The fact that all of Mr. Wallace’s income comes from business income and capital gains is irrelevant to a lack of deduction for normal business expenses. Any tax deductions of which Mr. Wallace took advantage were all Section 179 deductions that were non-cash expenses and would not fall under the scope of “normal business expenses” for the determination of Mr. Wallace’s personal income.

The net income of Mr. Wallace was discussed in depth by his CPA, (Mr. Kostick) as well as Ms. Tomes in her capacity as his former bookkeeper and much of the child support worksheet was incorporated by reference. Additionally, no objection was made to the admission of the “incomplete” child support worksheets. Even worse for the Appellant is the fact that the Appellant’s attorney at the time of trial specifically stated in her closing argument: “To avoid the heartache and headache of calculating child support we ask that the court look at the order, **look at the child support worksheets entered as an exhibit** and adopt the same.” RPIV 651.

It is clear that both parties were completely content with the support worksheets as presented at trial since there is no record of any objection but also encouragement by Appellant's Attorney to use them.

b. Part III, Section 14: The worksheet stating the total health care expenses are at \$131.

The Appellant alleges that the child support worksheets are incorrect because Ms. Tomes testified that the cost was \$113. not \$131.

To be exact, Ms. Tomes' testimony is thus:

Q: Do you know what it costs you per month for Keyton's medical insurance?

MS. TOMES: Maybe \$130.

Q: Would \$113 sound about right?

MS. TOMES: Yeah.

RPI 149, 150.

It is clear that Ms. Tomes was not directly looking at any specific bills for medical expenses and that she did not know for sure what the exact price of the bill was off the top of her head.

The finding that the health care is at a \$131.00 cost is not an abuse of discretion that was made on untenable grounds by the Trial Court Judge. Mr. Wallace's attorney did not probe into the issue at all during trial and accepted the child support worksheets with the \$131.00 cost without objection. In fact, the medical insurance issue was only raised one

time and accounts for just nine lines of trial transcript. *See* RPI 149-150. Furthermore, the trial testimony is not inconsistent with Ms. Tomes' trial testimony as she testified that the cost was "Maybe \$130." RPI 149. The fact that \$113 "would sound about right" to Ms. Tomes does not mean that she believes that \$113 is the true and correct number; but rather, it would not be a surprise to her if it did in fact end up being that cost and not the \$131 amount she originally thought it was.

- c. "Incomplete" Part VIII, Section 20(a), Section 20(c), Section 20(d), Section 22(b).

All of these sections fall under the "Additional Factors for Consideration" on the Washington State Child Support Worksheets and are factors that are taken into account after the gross child support obligation is determined on the worksheet. The trial court judge weighed heavily on the monthly gross income of both parties and chose not to delve into the "Additional Factors for Consideration" in the determination of the child support obligation. This action by the trial court judge is not an abuse of discretion that was made on untenable grounds. It is clear from the trial transcript and the CR 60(b) motion transcript that Mr. Wallace and his Attorney had no objections to the use of the "incomplete" child support worksheets at the time of trial and even encouraged the judge to use the worksheets in his determination. RPIV 651.

Additionally, in the CR 60(b) motion, Mr. Wallace's Attorney, Mr. Nelson alleged perjury for the submission of what he believed to be incomplete worksheets. CR 60(b) motion, 8. However, the transcript helps detail the true reasoning behind the blanks left on the worksheets as well as why the CR 60(b) motion was properly dismissed on this specific allegation of fraud and misrepresentation.

THE COURT: Have you ever practiced in family law and filled out child support worksheets yourself? Have you done very much of that?

MR. NELSON: No, I have not, Your Honor.

THE COURT: There are often blanks left in child support worksheets because many things don't apply, and so they are often just left blank. There are some – a number of blanks or a number of the spaces are appropriate to be filled in. Some cases, there are quite a few that just don't apply, and they are left blank...if your client had some problem with that, with these blanks, why wasn't that raised at the time?

MR NELSON: I don't know, but...

CR 60(b) Motion, 8.

4. There are no irregularities at trial that could have hindered Mr. Wallace's right to a fair trial.
 - a. Mr. Wallace's income was determined by extensive testimony

To start, the tax filings for Mr. Wallace show taxable income of \$109,680 in 2011, \$285,946 in 2012, and roughly \$150,000 in 2013. RPII 232, 240, 264. Although Mr. Wallace's income tax filings report losses from his personal income, the deductions were due to Section 179 business depreciation deductions that are non-cash expenses. RPII 250-257. The Trial Judge described the issue thus:

“There is absolutely nothing wrong with including them [Section 179 depreciation deductions] in your tax return. But it does not give an actual picture of [Mr. Wallace's] financial situation for purposes of child support.”

RPIV 664.

Additionally the evidence in question, which was only for illustrative purposes, makes specific references to the tax returns of Mr. Wallace that were admitted at trial and the numbers in the summaries did not vary from the admitted evidence. *See* RPII 321-327.

Also, of course, is that the Appellant has taken a quote by the trial court completely out of context (on top of mis-citing the quote), stating that the judge relied on the documents presented by Ms. Tomes for illustrative purposes in calculating Mr. Wallace's income. The judge is actually referring to Mr. Wallace using his business account for personal expenses and then not adding those back in as income to himself when he is referring to “adding those back in.”

“When you look at that, those noncash deductions, when I consider the fact that Wallace Rock Products has been paying his personal expenses, pay the child support, paying attorney fees, pays for some fuel, paying for real estate taxes, a lot of those things, that becomes sort of a double dip because first he gets the benefit of that money, those expenses being paid without having to count them as income because they’re just expenses being paid out of there by somebody else, but then he gets the added benefit of actually counting his income to him as a deduction or as a loss because the corporation is expensing that out and that’s what is offsetting the income for the corporation, so he’s – and then that ultimately passes through to him so he’s getting a double benefit from that.

After I added those back in, I could easily find that – by adding in all that depreciation, I could easily find it was over \$15,000 a month. I’m not going to do that. I’m going to set his income at \$12,000 a month gross for child support purposes. I find those funds that are reasonably available to him.”

RPIV 664, 665.

The Appellant has not only taken the trial court judge’s quote out of context, but has made empty allegations that are not supported by the record. The trial court judge did not abuse his discretion on untenable grounds or the alleged irregularity by using the testimony of all of the parties to come to a fair and reasonable conclusion as to the monthly income of Mr. Wallace. The Appellant has provided no evidence or any grounds to support his claim of an irregularity and has attempted to mislead the court by taking the trial judge’s quote out of context.

- b. There is no irregularity in the determination of Ms. Tomes’ income because the trial court judge based his decision from her tax returns as well as testimony at trial.

The Appellant alleges that there is an irregularity due to the Trial Court's conclusion that Ms. Tomes' income was \$3,390 per year. "There is no basis in fact for the trial court to reach that number and the court's decision to not consider the income from 40-45 additional tax returns from Ms. Tomes' side-business [sic] reflects clear bias." Brief of Appellant, 13. However, there is a clear basis for the court to conclude that Ms. Tomes' income was \$3,390 per month.

Ms. Tomes' testified on cross examination that she was on salary and makes \$41,200 a year. RPII 336. That translates to approximately \$3,433 per month. Ms. Tomes also submitted her tax return for 2012 and stated that it accurately reflected all of her earnings for 2012. RPII 303. This return included earnings from her tax service business, as Ms. Tomes testified to the income or loss from her tax service business being reflected on Line 12 of exhibit 35, her 2012 tax return. RPII 303.

There is simply no basis for the allegation for irregularity as it is clear from the transcript that Ms. Tomes' tax return business was reflected in her income tax filings and properly presented to the Court. It is clear that the Appellant only chose to selectively read the trial transcript as his allegation is derailed only two pages after his quoted text.

- c. There is no irregularity in the decision to ignore KJW's preference to live with his father because that is a discretionary decision made by the Judge.

There is no irregularity in the decision to ignore KJW's preference to live with his father. The decision to ignore the preference of the child is a discretionary decision made by the trial judge and will be reviewed on the abuse of discretion standard of making the decision on untenable grounds. *In re Marriage of Bostain*, 127 Wn.App. 1029 (Division 2, 2005); *Luckett v. Boeing Co.*, 98 Wn.App. 307, 309, 989 P.2d 1144 (1999). It is not uncommon for a judge to not take the preference of the child into account as minor children often do not know what is truly in their own best interest.

Whether or not the Appellant agrees with the Judge's decision, it was far from being made on untenable grounds since the Judge made his decision based on the extensive testimony of KJW's counselor and parents, rather than giving extensive weight to a child's preference. Furthermore, in determining a parenting plan under Chapter 26.26 RCW, the Trial Judge discussed the factors laid out in RCW 26.09.187(3). RPIV 657-659. One of the seven factors to be weighed is "The wishes of the parents and the wishes of a child who is *sufficiently mature* to express reasoned and independent preferences as to his or her residential

schedule.” RCW 26.09.187(3)(a)(vi). KJW is 14 years old. Brief of

Appellant, 14. The Trial Judge additionally explained:

“You know, I heard testimony I think from Dale Wallace about how it’s difficult when Keyton leaves the family home, that it’s tough for him to leave his dad. And again, I don’t put an awful lot of stock in that. I believe that happens. But whether a child is dealing with having to go back and forth and is away from one and then the other, it’s hard, it’s just hard on kids. I’ve had a lot of cases where I’ve had both parents describe that same phenomenon, well, I should get custody because the child always cries when he has to go back to the other parent. They miss both parents. They love both parents. Does that mean that’s a reasoned intelligent choice? I don’t put much weight on that evidence. So that’s really a non-factor.”

RPIV 660-661

With that, there is no irregularity in the decision to ignore KJW’s preference to live with his father and the discretionary decision was not made on untenable grounds by the Trial Court Judge.

- d. The Court did not show irregularity or bias in not considering the Guardian Ad Litem’s testimony because it was found to not be credible.

There are a number of reasons that the Guardian Ad Litem’s testimony was not credible and therefore, not considered. Again, this was a discretionary decision made by the trial court judge and in denying the CR 60(b) motion, this court must find that the trial judge abused his discretion and made his decision on untenable grounds by not considering the Guardian Ad Litem’s testimony.

To begin, the Guardian Ad Litem (Ms. Kitchen), had no certifications or licenses from Washington State regarding her position as a Guardian Ad Litem. RPII 340. Ms. Kitchen additionally had no formal training in the treatment of adolescent sex offenders and had only a vague understanding of the Special Sex Offender Disposition Alternative (SSODA) program, a program in which KJW was currently placed by the Lewis County Juvenile Court. RPI 29.

Ms. Kitchen's work as a Guardian Ad Litem was sporadic at best and little to no effort was made to look into the SSODA program and to determine if living with the Appellant was actually in the best interest of KJW. Ms. Kitchen at one time even stated that she was not instructed to look into the SSODA program as a part of determining the best interests of KJW, and also refused to answer who had given her these instructions. RPII 355.

In her initial report, Ms. Kitchen recommended that KJW stay with his father; however, Ms. Kitchen did not send out questionnaires to either party, check or read the court's file, or request any references from Mr. Wallace. RPII 343, 344. Additionally, Ms. Kitchen additionally spoke only to one reference that Ms. Tomes provided, did not speak to KJW's parole officer or even meet all of the siblings that would be residing with KJW if he would be doing so at his Mother's home. RPII 344, 345, 347.

Ms. Kitchen was not even aware that KJW would be sharing a room and a bed with his Father if he were to be living at the Appellant's home nor was she aware that all twenty of the occurrences of child molestation to which KJW plead guilty actually occurred at the Appellant's home. RPII 351, 357.

The actions of Ms. Kitchen continued to worsen as she admitted to basing much of her decision on the fact that KJW wanted to reside with his father instead of looking into his actual best interests. RPII 364. Furthermore, the addendum that Ms. Kitchen filed containing mainly information that was detrimental to Ms. Tomes was filed just three days prior to trial, giving Ms. Tomes very little time to respond. RPII 366. In fact, during the last two months since the filing of her original report Ms. Kitchen had no contact with Ms. Tomes, made no effort to contact the other siblings at Ms. Tomes' residence, and never tried to re-contact any of Ms. Tomes' references. However she was able to make three more visits to Mr. Wallace's home. RPII 369.

Contrarily, Ms. Batson is a certified counselor with training in being a Guardian Ad Litem and specializes in sex offenders and the SSODA program. RPI 21. In addition, the reasoning that Ms. Batson gave for not wanting to continue as KJW's counselor if he were to be placed in his father's care was that Mr. Wallace stopped all direct communication

with Ms. Batson after their first meeting. RPI 31, RPI 102. Ms. Batson further testified that it had become clear to her and her supervisor that there was no working relationship between Mr. Wallace and herself and that it would be best if she withdrew as KJW's therapist if the Appellant were to obtain custody. RPI 102.

The proper weight was given to the testimony of each and the Trial Court Judge did not abuse his discretion in finding that the testimony of Ms. Kitchen was not credible. Ms. Kitchen made little effort to work with Ms. Tomes and did not understand the full extent of the situation between KJW and his SSODA program as well as the living situations at each respective residence. The decision is a discretionary one and was not made on untenable grounds and therefore, was not an abuse of discretion.

B. THE TRIAL COURT DID NOT ABUSE ITS AUTHORITY WHEN IT IMPOSED SANCTIONS ON MR. WALLACE AND HIS ATTORNEY BECAUSE THE MOTION WAS NOT GROUNDED IN FACT AND NONE OF THE ALLEGATIONS IN THE RESPONDENT'S MOTION OR BRIEF ARE SUPPORTED BY EVIDENCE PRESENTED IN THIS CASE.

Sanctions may be imposed under CR 11 if motions are not well grounded in fact, not warranted by existing law, or if made to harass or needlessly increase the cost of litigation. CR 11(a)(1), (a)(2), (a)(3). "If a pleading, motion, or legal memorandum is signed in violation of this rule,

the court, upon motion or *upon its own initiative*, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.” CR 11(a)(4). The Trial Court Judge found that:

- 1) the Superior Court had jurisdiction over the subject matter of the litigation;
- 2) RCW Chapter 26.26 was the proper Chapter to commence the action;
- 3) at the time of trial, the Court took into consideration all the testimony and exhibits in calculating the income of Mr. Wallace,
- 4) there was no fraud nor misrepresentations in these matters and that any blanks on the child support worksheets were not material and would not affect the calculation of child support;
- 5) Mr. Wallace’s attorney approved the child support worksheets;
- 6) none of the allegations in Mr. Wallace’s motion are supported by the evidence presented in this case;
- 7) Mr. Wallace’s motion was frivolous and not well grounded in fact or warranted by existing law, and was brought for the improper

purpose of harassing Ms. Tomes and increasing the cost of litigation and;

8) no irregularity or any other reason justifies setting aside the Orders.

Order on CR 60(b) Motion, 2.

Based on all of the issues that were raised by the Appellant and that would be quite easily dismissed upon reading the trial transcript, the trial court judge did not abuse his authority in imposing sanctions. The allegations of the Appellant are conclusory at best and at times outright wrong. Whether or not Ms. Tomes was seeking attorney fees, the court, on its own could have awarded Ms. Tomes for the finding that the motion was frivolous. The Appellant refers to the case of *Manteufel v. Safeco Ins. Co. of Am.* and states that “the party seeking sanctions must specifically identify what fees were incurred in responding to the allegedly improper allegations.” Brief of Appellant, 15. This is an incorrect interpretation of that case as the *Manteufel* court did not discuss or rule on the necessity of specifically identifying the fees. The reading of CR 11 is quite clear that the court may impose reasonable attorney’s fees on its own, without any sort of specific identification of fees incurred. At any rate, Ms. Tomes did in fact state the request for attorney’s fees in the amount of \$1500.00 for having to respond to the Appellant’s motion. See Reply Declaration of Glenda Tomes, 3.

C. IT IS REQUESTED THAT THE COURT OF APPEALS GRANT REASONABLE ATTORNEY FEES TO MS. TOMES DUE TO THE PRESENT ACTION BEING FRIVOLOUS, NOT GROUNDED IN FACT, AND NOT SUPPORTED BY THE RECORD.

The Trial Judge made findings that the CR 60(b) motion was frivolous, not grounded in fact, and not supported by the record. *See* Order on CR 60(b) Motion. As much as the Appellant may disagree with those findings and the sanctions imposed by the Trial Judge, every issue that has been raised by the Appellant is easily dismissed. It has become increasingly clear that the Appellant has no factual basis for many of his allegations or that his allegations are not supported by the record. The Appellant has taken quotes out of context, made empty allegations with little or no explanation or evidence to support them, and has unnecessarily extended the length and cost of litigation. All of which has taken place in the context where no appeal of the original findings was made, no CR 59 motion for reconsideration was filed, and what the trial court has found to be an untimely and frivolous CR 60(b) motion.

Overall, the Appellant has failed to make any substantive argument that is grounded in fact or supported by the record, and thus, it is requested that the Court also award Ms. Tomes reasonable attorney fees on appeal.

V. CONCLUSION

For all of the foregoing reasons, the Court should affirm the Trial Court Judge's decision in denying the CR 60(b) motion and uphold the sanctions imposed on Mr. Wallace and his Attorney. It is also requested that this Court award the reasonable attorney fees to Ms. Tomes based upon the nature of this action.

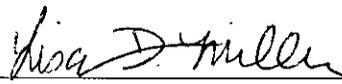
Dated this 25th day of August, 2015.



JOSEPH P. ENBODY

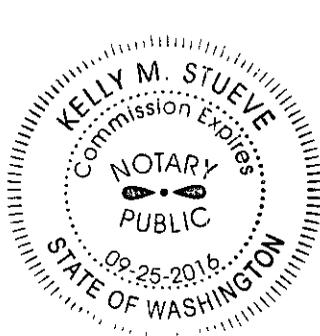
Clerk of the Court Court of Appeals 950 Broadway, Suite 300 Tacoma, WA 98402-4454	Mr. Wayne C. Fricke Hester Law Group, Inc., P.S. 1008 South Yakima Avenue Suite 302 Tacoma, WA 98405
Ms. Glenda Holbrook 113 Drews Prairie Road Toledo, WA 98591	

DATED this 25th day of August, 2015.



 LISA D. MILLER

SIGNED AND SWORN TO before me this 25th day of August, 2015.





 Notary Public in and for the
 State of WA, residing at: Tenino
 My Commission Expires: 09/25/16
 Printed Name: Kelly M. Stueve