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DEC 15 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

**No. 281248
COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

IN RE MARRIAGE OF:

NUTHAVADEE SLANE, Respondent,

and

STEPHEN SLANE, Petitioner.

RESPONSIVE BRIEF OF RESPONDENT

Brian Chase
Attorney for Respondent
209 Central Avenue South
Quincy, WA 98848
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CONSTITUTION

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I. STATEMENT OF ISSUES

A. WERE THE TRIAL COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW PROPER AND SUFFICIENT?

B. WERE MRS. KUKES' CLAIMS AND EVIDENCE SUFFICIENT TO SUPPORT FINDINGS OF CONTEMPT?

C. DOES THE TRIAL COURT'S VIOLATION OF RCW 2.08.240 HAVE ANY IMPACT ON THE VALIDITY OF ITS ORDERS, JUDGMENTS, OR JURISDICTION?

D. DID THE TRIAL COURT "ABUSE ITS DISCRETION BY NOT ALLOWING MORE EVIDENCE TO," OR BY CONSTRUING THE EVIDENCE ON RECORD?

E. DID THE TRIAL COURT ABUSE ITS DISCRETION BY NOT *SUA SPONTE* APPLYING THE DOCTRINES OF LACHES AND EQUITABLE ESTOPPEL?

F. ARE THE AMOUNTS OF THE TRIAL COURT'S AWARDS FOR CHILD SUPPORT ARREARAGES AN ABUSE OF DISCRETION?

G. DID THE TRIAL COURT ACT THROUGH BIAS OR WITHOUT JURISDICTION?

H. ARE THE CONTEMPT ORDERS INVALID UNDER CR 54 OR THE DUE PROCESS CLAUSE?

I. IS MRS. KUKES ENTITLED TO AN AWARD FOR COSTS AND ATTORNEY'S FEES ON APPEAL?

II. STATEMENT OF THE CASE

A. PROCEDURAL FACTS

Grant County Superior Court Commissioner Melissa Chlarson issued two Orders to Show Cause Re: Contempt of Court against Stephen Slane for non-payment of child support: the first on September 26, 2008 and the second on March 3, 2009. CP 155.

On March 27, 2009, the trial court found Mr. Slane in contempt as to both orders to Show Cause, and awarded Nuthavadee Kukes judgment for back child support in the amount of \$26,076 and \$9,700, respectively. CP 145-154.

Mr. Slane appealed both Orders of Contempt. CP 83-84.

B. SUBSTANTIVE FACTS

Mrs. Kukes and Mr. Slane were married in 1996. They had two daughters as a result of their marriage, ES (15 y.o.) and PS (13 y.o.). They divorced on January 28, 2002, on which date an Order of Child Support and Parenting Plan were entered. CP 1. The Parenting Plan granted custody of the parties' children to Mrs. Kukes. Mr. Slane was ordered to pay \$878 a month in child support. CP 3.

In December 2001, Mr. Slane relocated to St. Louis, Missouri, where he continues to reside. CP 10-18.

In August 2003, the parties signed a written agreement (herein, the “2003 Agreement”) reducing child support to \$500 per month. CP 10.

In February 2004, the parties agreed to \$600 per month in child support. RPII 9; CP 19-41.

From June 2005 until June 2008, ES resided with Mr. Slane. CP 11.

1. The First Contempt of Court

On August 27, 2008, the trial court issued an Order to Show Cause re: Contempt of Court for violations of the Parenting Plan and Order of Child Support.¹ (CP 200)

On September 26, 2008, the Show Cause hearing regarding both contempts was held. RPI 1-38. The trial court found Mr. Slane in contempt for violating the Parenting Plan but took the child support contempt charge under advisement and did not render its ruling until the hearing of March 27, 2009. RPI 35.

On March 27, 2009, the trial court orally ruled that Mr. Slane willfully violated the Order of Child Support and found him in contempt for failure to pay child support for sporadic months from February 2002 through August 18, 2008. RPII 10. The trial court found:

¹ Mrs. Kukes also filed petitions to Modify Parenting Plan and Modify Order of Child Support.

(1) From January 2002 until August 2003, child support was \$878 per month. RPII 9

(2) From August 2003 until February 2004, child support was \$500 per month. RPII 9

(3) From February 2004 until June 2005, child support was \$600 per month. RPII 8

(4) From June 2005 until June 2008, child support was \$300 per month. RPII 9

(5) From June 2008 to August 18, 2008, child support was \$878 per month. RPII 9

The trial court orally ruled that Mr. Slane's child support arrearages were \$35,076, but then stated that that amount should be reduced to reflect the split custody arrangement from June 2005 until June 2008. RPII 10. The trial court ruled that from June 2005 until June 2008, the monthly child support amount should be reduced by 50%, *i.e.*, from \$600 per month to \$300. RPII 10.

2. The Second Contempt of Court

Despite the first contempt proceeding, Mr. Slane still refused to pay any child support. CP 146. Therefore, on March 3, 2009, the trial

court issued a second Order to Show Cause re: Contempt of Court for non-payment of child support. CP 155.

On April 17, 2009, the trial court again found Mr. Slane in contempt for failure to pay child support, this time for the period of August 19, 2008 to April 10, 2009. CP 146. The trial court awarded Mrs. Kukes judgment against Mr. Slane in the amount of \$9,700. CP 146.

3. Presentment Hearing

At the end of the March 27 hearing, the trial court scheduled a hearing to present orders for April 10, 2009.² RP II 16. The trial court told Mr. Slane that he may not appear telephonically for the hearing but may submit his disagreements with Mrs. Kukes' proposed orders in writing. RPII 16.

On April 2, 2009, Mr. Slane was given copies of all eleven proposed orders by Mrs. Kukes' husband when the parties' exchanged the children that evening. CP 190.

On April 7, Mr. Slane submitted his disagreements with the proposed orders by declaration, along with two proposed child support

² A total of eleven (11) orders were set for presentation on April 10: (1) Findings and Order On Show Cause; (2) Order/Findings Re Adequate Cause; (3) Order/Findings Re Modification of Parenting Plan; (4) Order On Modification Of Child Support; (5) Order and Findings On Show Cause Re Contempt; (6) Order On Show Cause Re Contempt; (7) Order and Findings On Attorneys Fees And Costs; (8) Temporary Order; (9) Temporary Parenting Plan; (10) Temporary Order of Child Support; and (11) Child Support

worksheets. CP 201-205. In his lengthy declaration, Mr. Slane did not complain or object to the manner of service of the proposed orders. Id.

On April 10, Mrs. Kukes appeared for the hearing. CP 207-209. Mr. Slane did not. Id. Commissioner Chlarson was not present at court that day due to illness. Id. The court administrator told Mrs. Kuikes that the hearing would be “administratively” continued to the following week, but that she should re-note the hearing for April 17 in case this was not done by the judge pro tempore. Id. Mrs. Kukes did so, and a copy of the re-noteup was mailed to Mr. Slane. Id.

On April 17, Mrs. Kukes again appeared for the presentation of orders hearing. Id. The trial court entered all eleven (11) proposed orders after inserting some changes. Id.

On May 15, 2009, Mr. Slane timely filed his notice of discretionary review. CP 83-84.

4. Trial Court’s Recusal

On August 10, 2009, Mr. Slane filed a Motion to Recuse Commissioner Chlarson. CP 168 Mr. Slane alleged that the Commissioner and Mrs. Kukes’ counsel attended the same law school, and that they had a private relationship. CP 112. Counsel for Mrs. Kukes submitted a

declaration averring that he and the Commissioner have never spoken or met outside the courtroom, and they had no relationship of any kind. CP 170-171 Commissioner Chlarson denied Mr. Slane's motion to recuse but subsequently recused herself when Mr. Slane filed a motion for reconsideration. CP 112.

III. ARGUMENT

At the outset, it should be noted that Mr. Slane does not assign error to any of the trial court's findings. Thus, the trial court's findings are verities. See, Kelly v. Powell, 55 Wn.App. 143, 146, 776 P.2d 996 (1989).

A. The Trial Court's Findings of Fact and Conclusions of Law Were Proper and Sufficient.

1. Standard of Review.

"In reviewing a trial court's finding of contempt, an appellate court reviews the record for a clear showing of abuse of discretion." Templeton v. Hurtado, 92 Wn.App. 847, 852, 965 P.2d 1131 (1998). Discretion is abused if it is exercised on untenable grounds or for untenable reasons, such as misunderstanding of the law or an incorrect legal analysis. State v. Burke, 163 Wn.2d 204, 210, 181 P.3d 1 (2008).

2. Argument.

RCW 26.18.050(1) provides, in pertinent part:

If an obligor fails to comply with a support or maintenance order, a petition or motion may be filed without notice under RCW 26.18.040 to initiate a contempt action as provided in chapter 7.21 RCW. If the court finds there is reasonable cause to believe the obligor has failed to comply with a support or maintenance order, the court may issue an order to show cause requiring the obligor to appear at a certain time and place for a hearing, at which time the obligor may appear to show cause why the relief requested should not be granted. A copy of the petition or motion shall be served on the obligor along with the order to show cause.

RCW § 26.18.050(1) (2010).

In addition, RCW 7.21.010(1) provides, in relevant part:

“Contempt of court” means intentional:

....

(b) Disobedience of any lawful judgment, decree, order, or process of the court;

RCW § 7.21.010(1) (2010).

Here, the trial court entered proper written findings of fact. In both orders the trial court made findings that:

(1) Mr. Slane “intentionally failed to comply with a lawful order of the court dated on January 28, 2002.”

(2) Mr. Slane violated the order by failing to pay child support per the Order of Child Support.

(3) Mr. Slane had the past and present ability to comply with the order.

CP 146; CP 151.

This is all that is necessary. See, RCW 7.21.010; RCW 26.18.050.

Mr. Slane's reliance on Templeton v. Hurtado is obviously misplaced. The issue in that case was whether the "factual recitation" in an order of *summary* contempt under RCW 7.21.050 was sufficient. RCW 7.21.050 specifically requires an order of *summary* contempt to recite the facts, state the sanctions imposed, and be signed by the judge and entered on the record. RCW § 7.21.050(1). Neither RCW 7.21.040 nor RCW 26.18.050 impose any factual recitation requirement.

Also, the notes made by the trial court when it reviewed the submitted materials are not its findings of fact, and there is no requirement the trial court enter its informal notes into the "court record."

The trial court obviously did not believe or put much weight into Mr. Slane's "deposit slips" of January and February 2007. CP 21; CP 22. This the trial court had every right to do. It does not constitute an abuse of discretion.

There are no inconsistencies with the orders on contempt. Even if there were, this does not, in itself, prove they are “insufficient in reciting additional findings or conclusions.” App.’s Brief at 6. “[W]hen the language of findings is equivocal and susceptible of . . . another construction, the findings will be given that meaning which sustains the judgment, rather than one which would defeat it.” Smith v. Shannon, 100 Wn.2d 26, 35, 666 P.2d 351 (1983).

Mr. Slane’s net income was not “proven” to be around \$7,150. App.’s Brief at 6. The trial court made the finding that Mr. Slane’s net income was \$8,050. CP 146; CP 151.

At the March 27, 2009 hearing, the trial court awarded Mrs. Kukes attorney’s fees and costs for Mr. Slane’s contempt of court for violating the parenting plan as found on September 26, 2008. CP 151. Mrs. Kukes specifically requested that an award of attorney’s fees and costs be reserved during the September 26 hearing. RPI 19-20. This is the reason the first contempt order references Mr. Slane’s violation of the Parenting Plan. As such, this could not prejudice Mr. Slane in future proceedings because there was never a second finding of contempt as to the Parenting Plan.

The dates and amounts in the contempt orders are consistent with the trial court's oral rulings, as well as the "motions filed." App.'s Brief at 7.

In sum, the trial court entered proper written findings of fact, and it did not abuse its discretion in making those findings.

B. Mrs. Kukes' Claims And Evidence Were Sufficient To Support Findings Of Contempt.

1. Standard of Review.

"In reviewing a trial court's finding of contempt, an appellate court reviews the record for a clear showing of abuse of discretion." Templeton, 92 Wn.App. at 852.

2. Argument.

RCW 26.18.050(1) provides:

If an obligor fails to comply with a support or maintenance order, a petition or motion may be filed without notice under RCW 26.18.040 to initiate a contempt action as provided in chapter 7.21 RCW. If the court finds there is reasonable cause to believe the obligor has failed to comply with a support or maintenance order, the court may issue an order to show cause requiring the obligor to appear at a certain time and place for a hearing, at which time the obligor may appear to show cause why the relief requested should not be granted. A copy of the petition or motion shall be served on the obligor along with the order to show cause.

RCW § 26.18.050(1) (2010).

Our child support enforcement laws were enacted in recognition of “an urgent need for vigorous enforcement of child support and spousal maintenance obligations.” RCW § 26.18.010 (2010).³ Although the legislature cited specific existing statutory remedies it wished to “supplement and complement,” it did not intend this list to be exhaustive. RCW § 26.18.010. “Instead, the remedies provided in the act must be liberally construed and ‘are in addition to, and not in substitution for, any other remedies provided by law.’” Rhinevault v. Rhinevault, 91 Wn.App. 688, 693, 959 P.2d 687 (1998) (quoting, RCW § 26.18.030(1)).

To effectuate this statutory purpose, courts may initiate contempt actions under RCW 7.21 against a parent who fails to comply with a support order. Rhinevault, 91 Wn.App. at 693 (citing, RCW § 26.18.050). The court may use a contempt action to enforce a support order until all of the obligor’s duties accruing under the order have been satisfied. Rhinevault, 91 Wn.App. at 693 (citing, RCW § 26.18.050(5)). This authority extends to arrearages. Id.

RCW 7.21.010(1) provides, in relevant part:

“Contempt of court” means intentional:

³ RCW § 26.18.010 states: “The legislature finds that there is an urgent need for vigorous enforcement of child support and maintenance obligations, and that stronger and more efficient statutory remedies need to be established to supplement and complement the remedies provided in chapters 26.09, 26.21A, 26.26, 74.20, and 74.20A RCW.”

....

(b) Disobedience of any lawful judgment, decree, order, or process of the court;

RCW § 7.21.010(1) (2010).

Here, Mr. Slane's failure to pay child support was an intentional act. "A person is held to have intended the natural and probable consequences of his acts." In re Estates of Smaldino, 151 Wn.App. 356, 364-65, P.3d 579 (2009) ("The violation of a court order without reasonable excuse is deemed willful."). As such, Mr. Slane is guilty of intentional disobedience of the court's Order of Child Support.

At best, Mr. Slane's "sufficiency of claim" argument is incoherent and confused. Mr. Slane never brought a CR 12(b) motion or any other motion to dismiss. In any event, Mrs. Kukes clearly stated sufficient claims for relief in all her pleadings.

Mrs. Kukes didn't show "bad faith by bringing a contempt proceedings (sic) to enforce a child support order from 2002 to the date of filing, when she signed a contract relieving Mr. Slane of that obligation in 2003." App.'s Brief at 7. The trial court made no finding of bad faith by Mrs. Kukes, and the record would not support such a finding. Furthermore, "[a] child's custodian receives support money as trustee and

not in his or her own right. For this reason agreements between parents regarding modification of prospective child support are invalid as against public policy.” In re Marriage of Watkins, 42 Wn.App. 371, 373, 710 P.2d 819 (1985). In any event, the 2003 Agreement did not relieve Mr. Slane of his duty to make child support payments. CP 10-11; CP 15-16.

Contrary to Mr. Slane’s assertion, the trial court never “admitted that Mrs. Kukes’ claim was not well ground in fact.”⁴ App.’s Brief at 7.

Perhaps the most strange and confused argument of all is Mr. Slane’s argument regarding “the use of perjury” to obtain a judgment. There has been no finding of perjury. There is no indication of perjury except for Mr. Slane’s self-motivated and baseless allegations.

Mrs. Kukes’ claims that Mr. Slane was failing to pay child support in violation of a court order had sufficient factual support. Mrs. Kukes submitted a declaration in which she averred that Mr. Slane had not paid child support. CP 3-9; CP 64-65. Moreover, Mr. Slane admitted he hadn’t paid any child support since at least February 2007. CP 142.

Mr. Slane also argues “CR 11 sanctions should have raised by Mr. Slane or the court.” App.’s Brief at 8. Mr. Slane clearly misunderstands CR 11. Moreover, it is not the duty of the court to raise claims on behalf

⁴ “[I]t appears that I agree with Mr. Slane that it’s not exactly as Ms. Kukes had presented it to the Court. . .” RPII 7.

of a party. Mr. Slane's failure to move for CR 11 sanctions is his own fault. It was not error or an abuse of discretion for the trial court to fail to *sua sponte* impose CR 11 sanctions.

The trial court did not "argue for Mrs. Kukes and present its own claim and only interpret evidence submitted by Mr. Slane in favor of the court's own claim . . ." App.'s Brief at 8. This assertion is absurd and unsupported by the record. And Mr. Slane's reliance on Arlook v. S. Lichtenberg & Co., Inc., 952 F.2d 367, 374 (11th Cir. 1992), is bewildering. App.'s Brief at 8.

Mr. Slane's CR 15 argument is meritless. App.'s Brief at 8.

Though it's very unclear what Mr. Slane means by "provisional fact," the record clearly shows that Mr. Slane never raised any issue regarding whether the child support order was "void" or the result of fraud. App.'s Brief at 8.

Contrary to Mr. Slane's assertion, the Order of Child Support from January 2002 was "presented to the court." App.'s Brief at 8. Mrs. Kukes filed certified copies of the Parenting Plan and Order of Child Support in Grant County Superior Court when she filed her petitions for Modification of Child Support and Parenting Plan.

Mr. Slane's claim that the result of the parties' 2003 Agreement was to deprive Mrs. Kukes (in reality, the children) of the remedy of contempt proceedings, even though Mr. Slane failed to pay child support for nearly three years, is contrary to well-established law. "Civil contempt proceedings are an appropriate method to seek enforcement of past due child support obligations." Watkins, 42 Wn.App. at 373-74. It's not surprising Mr. Slane cites to no authority to support his assertion.

C. The Trial Court's Violation Of RCW 2.08.240 Has No Impact On The Validity Of Its Orders, Judgments, Or Jurisdiction.

1. RAP 2.5(a).

RAP 2.5(a) provides, in relevant part:

The appellate court may refuse to review any claim of error which was not raised in the trial court. However, a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right.

"The purpose of this rule is to afford the trial court an opportunity to correct errors, thereby avoiding unnecessary appeals and retrials."

Demelash v. Ross Stores, 105 Wn.App. 508, 527, 20 P.3d 3447 (2001).

"[E]ven constitutional rights can be waived by failing to utilize the machinery available for asserting them." Henriksen v. Lyons, 33 Wn.App.

123, 128, 652 P.2d 18 (1982). "Experience has indicated the desirability

of adhering to our rule that constitutional issues not presented to or considered by the trial court will not be considered on appeal.” Long v. Odell, 60 Wn.2d 151, 153, 372 P.2d 548 (1962); State v. Davies, 73 Wn.2d 271, 276, 438 P.2d 185 (1968).

Failure to raise an issue before the trial court generally precludes a party from raising it on appeal. . . . The same rationale requires parties to inform a court acting as trier of fact of the rules of law they wish the court to apply. While a party has the right to assume that the trial court knows and will properly apply the law, this does not excuse failure to seek correction of an error once the complaining party becomes aware of it. . . . Failure to make such a motion when it would enable the trial court to correct its error precludes raising the error on appeal.

Shannon, 100 Wn.2d at 37.

Here, Mr. Slane failed to raise this issue with the trial court. As such, this Court should refuse to review this claim of error.

2. Argument.

RCW 2.08.240⁵ provides:

Every case submitted to a judge of a superior court for his decision shall be decided by him within ninety days from the submission thereof: PROVIDED, That if within said

⁵ RCW 2.08.240 is derived from Art. IV, § 20 of the Washington constitution:

Every cause submitted to a judge of a superior court for his decision shall be decided by him within ninety days from the submission thereof; Provided, That if within said period of ninety days a rehearing shall have been ordered, then the period within which he is to decide shall commence at the time the cause is submitted upon such a hearing.

period of ninety days a rehearing shall have been ordered, then the period within which he is to decide shall commence at the time the cause is submitted upon such rehearing, and upon wilful failure of any such judge so to do, he shall be deemed to have forfeited his office.

RCW § 2.08.240 (2010).

Judgments not rendered within 90 days after the trial or hearing are not void and the court does not lose jurisdiction by reason of delay. Moylan v. Moylan, 49 Wash. 341, 272, 95 P. 271 (1908) (“The mere fact that the judgment was not rendered within 90 days does not of itself constitute error upon which the judgment may be reversed.”) Phillips v. Phillips, 52 Wn.2d 879, 884, 329 P.2d 833 (1958) (“[T]he constitutional requirement does not lessen the jurisdiction of the court or render void a decision made beyond the ninety-day period.”); Bickford v. Eschbach, 167 Wash. 357, 378, 9 P.2d 376 (“Nothing in the constitutional provision requiring a decision within ninety days forbids a decision at any other time or lessens the jurisdiction of the judge of the superior court.”); Ex Parte Cress, 13 Wn.2d 7, 10, 123 P.2d 767 (1942) (“[J]urisdiction is not lost by failure to enter judgment or sentence within ninety days after submission.”); State v. Martin, 137 Wn.2d 149, 156, 969 P.2d 450 (1999) (“[T]he superior court is a court of general

jurisdiction and has the authority to render a judgment at any time except as the law may expressly forbid.”).

Here, Mr. Slane did not cite the 180 day delay as a defense to the motion for the second contempt. CP 141-143. Even if he had, the trial court’s violation of RCW 2.08.240 is not a defense.

It is immaterial that Mr. Slane was prejudiced as a result of the trial court’s delay in rendering its decision regarding the first contempt proceeding. Mrs. Kukes suffered prejudiced as well.

certainly it was never thought that the remedy was to be found in the holding that the judgment afterwards rendered is nugatory. To give [art. IV, § 20] this construction is to prolong the very evil it was sought to avoid, and to punish the very persons whom it was intended should be its beneficiaries. If the judgment, when rendered, is to be declared void, then the litigants who have already been subjected to an unconstitutional delay must again be subjected to the additional delays necessary to again bring the cause to the condition it was before the court violated its sworn duty. They must also pay the accruing costs necessary for that purpose. . . . To punish the litigant for the wrongs of the court which he has no power to prevent is not, we repeat, the purpose of this constitutional provision, and to so hold would be subversive of its intent.

Martin, 137 Wn.2d at 156 (quoting, Demaris v. Baker, 33 Wash. 200, 202-03, 74 P. 362 (1903)).

Contrary to Mr. Slane’s assertion, the trial court never stated that the definitions of RCW 7.21 do not control child

support enforcement actions. RPII 6-8. The trial court simply commented that “bad faith” is not a necessary element of contempt actions brought under RCW 26.18.050. RPII 6-8.

In any event, Mr. Slane’s failure to pay any child support for the period of January 2007 through April 2009 clearly constitutes willful disobedience of a court order.

Mr. Slane further alleges that his confusion resulting from the trial court’s delay is a complete defense to his complete failure to pay child support. App.’s Brief at 10. This is patently absurd. It is well-established that agreements between parents prospectively modifying child support payments are void as against public policy. See, e.g., Hartman v. Smith, 100 Wn.2d 766, 766-67, 674 P.2d 176 (1984). Furthermore, a trial court may not retrospectively modify child support amounts. See, Hunter v. Hunter, 52 Wn.App. 265, 268, 758 P.2d 1019 (1988) (citing, RCW 26.09.170) (“[d]elinquent support payments become vested judgments as they fall due. The accumulated judgments are generally not subject to retrospective modification.”). Mr. Slane should have known the law already had an answer for his supposed confusion.

At a minimum, Mr. Slane should have been paying \$500 a month in child support. As he readily admitted in his declaration of March 23, 2009 and Appellate Brief, Mr. Slane knew that, beginning in September 2008, his child support payments would be at least \$500 a month. Yet he pays absolutely nothing for the following eight months. All the while Mrs. Kukes is, once again, paying all the expenses for the parties' two teenage daughters.⁶ Mr. Slane's complete failure to pay any child support from May 2006 through April 2009 clearly constitutes contempt.

Mr. Slane's assertion that contract principles govern the contempt of court proceedings is without merit. Mrs. Kukes simply has no authority to make any contract regarding her children's support payments because she has no ownership interest therein. "A child's custodian receives support money as a trustee and not in his or her own right." Fuqua v. Fuqua, 88 Wn.3d 100, 105, 558 P.2d 801 (1977); Ditmar v. Ditmar, 48 Wn.2d 373, 293 P.2d 759 (1956) ("We have held that a mother has no personal interest in child support money and holds it only as a trustee. She cannot waive the children's rights in the support money."); Lear v.

⁶ According to Mr. Slane's own evidence, he didn't pay any child support after May 2006. CP 21-40. In fact, Mr. Slane "resumed" monthly child support payments only due

Lear, 29 Wn.2d 692, 700, 189 P.2d 237 (1948) (“[T]he child itself is the beneficiary under an order directing the payment of money for the child’s support.”); Watkins, 42 Wn.App. at 373 (“A child’s custodian receives support money as trustee and not in his or her own right. For this reason agreements between parents regarding modification of prospective child support are invalid as against public policy.”)

As such, the parties’ 2003 Agreement reducing child support was not the “controlling document for support”; the 2002 court order was. Mr. Slane’s failure to comply with the court order, *as well as both agreements of the parties*, were clearly established. His failure to pay child support is enforceable through contempt of court proceedings, regardless of the parties’ agreement. Watkins, 42 Wn.App. at 373-74 (“Civil contempt proceedings are an appropriate method to seek enforcement of past due child support obligations.”).

to DCSE garnishing his wages.

D. The Trial Court Did Not “Abuse Its Discretion By Not Allowing More Evidence,” Or By Construing The Evidence On Record.

1. Standard of Review.

“The judgment of a trial court is presumed to be correct,” Smith v. Shannon, 100 Wn.2d 26, 35, 666 P.2d 351 (1983), “and in the absence of an affirmative showing of error it will be sustained.” Mattice v. Dunden, 193 Wash. 447, 450, 75 P.2d 1014 (1938))

2. Argument.

The trial court did not erroneously “refuse to allow Mr. Slane to submit more evidence of payment.” App.’s Brief at 11. After the trial court rendered its rulings at the March 27, 2009 hearing, Mr. Slane inquired about submitting additional evidence regarding child support payments. RPII 11. The trial court correctly denied his request on the grounds that it was too late. RPII 11-12. Assuming due process rights are afforded civil contemptees, “due process only requires that a defendant be given a reasonable time for preparation.” State v. Hatten, 70 Wn.2d 618, 621, 425 P.2d 7 (1967).

What constitutes a reasonable time depends on particular circumstances. The time to be given to defendant to procedure counsel and prepare his defense is within the sound discretion of the trial court, which depends on what is fair, right, and reasonable in the particular case. The

action of the trial court may be reversed for an abuse of discretion.

Hatten, 70 Wn.2d at 621 (quoting, 5 Wharton, Criminal Law and Procedure § 1914 (1957 ed.)).

It should be noted that Mr. Slane did not ask for a continuance; furthermore, there is no contention that a better defense could have been prepared had more time been allowed. The trial court had before it all of the pertinent evidence which Mr. Slane could have supplied. “If a more extensive hearing than that which is afforded is desired in contempt proceedings, an application for such hearing must be made in the trial court, otherwise, error cannot be predicated on the failure to grant it.” Hatten, 70 Wn.2d at 622.

In any event, Mr. Slane had six months (*i.e.*, September 26, 2008 to March 27, 2009) to submit additional evidence. He failed to do so. The trial court did not abuse its discretion by denying Mr. Slane’s belated request to submit additional evidence of payment.

Again, Mrs. Kukes clearly provided factual support on which to litigate the contempt actions. Again, as Mr. Slane never brought a motion to dismiss, it was not an abuse of discretion for the trial court to not *sua sponte* dismiss the contempt proceedings.

Mr. Slane's assertion that the trial "court acted as a third litigant" is baseless, patently absurd, and completely unsupported by the record. App.'s Brief at 12. The trial court did not "adjust" Mrs. Kukes' claim.⁷ App.'s Brief at 11. Nor did it offer "its own interpretation of the evidence submitted by Mr. Slane, in favor of Mrs. Kukes."⁸ App.'s Brief at 11. Also, under CR 54(c):

Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

The trial court's weighing of the evidence was not an abuse of discretion. The trial court reviewed all the evidence submitted by the parties (RPII 5; RPII 8) and found that: (1) the January 28, 2002 Order of Child Support required \$878 per month in child support; (2) in August 2003, the parties entered into a written agreement to reduce child support to \$500, which was evidenced by the written agreement; and (3) in February 2005, the parties agreed to monthly child support of \$600 per month, which was established by email correspondences submitted by Mr. Slane. RPII 8-9. This is sufficient evidence to support the trial court's finding that the parties' agreed to raise child support to \$600 per month.

⁷ Mrs. Kukes has no idea what this means.

⁸ Mrs. Kukes has no idea what this means.

Mr. Slane's additional arguments regarding contract principles are meritless and incoherent. App.'s Brief at 11.

E. The Trial Court Did Not Abuse Its Discretion By Not *Sua Sponte* Applying the Doctrines of Laches or Equitable Estoppel.

1. RAP 2.5(a).

RAP 2.5(a) provides, in relevant part:

The appellate court may refuse to review any claim of error which was not raised in the trial court. However, a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right.

Equitable estoppel argument is not a “manifest error affecting a constitutional right” under RAP 2.5(a)(3). State v. Foulkes, 63 Wn.App. 643, 649, 821 P.2d 77 (1991).

Here, Mr. Slane did not raise an equitable estoppel or laches argument at any time in the proceedings below. “Ordinarily, we will not consider an issue raised for the first time on appeal.” In re Marriage of Knutson, 114 Wn.App. 866, 870, 60 P.3d 681 (2003).

Moreover, the record regarding equitable estoppel and laches is completely absent as neither party submitted any evidence or argument on

this issue. As a result, it is impracticable for the Court of Appeals to address this issue.⁹

2. Argument.

a. *Laches*

Laches is an equitable defense based on estoppel . . . To establish laches, the defendant has the burden of proving that: (1) the plaintiff had knowledge of the facts constituting a cause of action or a reasonable opportunity to discover such facts; (2) there was an unreasonable delay in commencing the action; and (3) there is damage to the defendant resulting from the delay.

Watkins, 42 Wn.App. at 374-75. (Citations and internal quotations omitted).

Laches in legal significance, is no mere delay, but delay that works a disadvantage to another. So long as the parties are in the same condition, it matters little whether one presses a right promptly or slowly . . .

In re Marriage of Barber, 106 Wn.App. 390, 396, 23 P.3d 1106 (2001).

“Absent unusual circumstances, the doctrine of laches should not be invoked to bar an action short of the applicable statute of limitation. Hunter v. Hunter, 52 Wn.App. 265, 270, 758 P.2d 1019 (1988). Moreover, the delay required can only be considered unreasonable if it occurs under circumstances permitting diligence. Hunter, 52 Wn.App. at 270. Finally, more than an unreasonable delay is required: there must also

⁹ This Court is a court of *review*. Mr. Slane ought to treat it as such and not as a court of

be an intervening change of position on the part of the defendant, making it inequitable to enforce the claim. Id. at 270.

In this case, it is undisputed that Mrs. Kukes had knowledge of the facts constituting a cause of action. She delayed bringing that action until August 2008, almost 5 years after Mr. Slane's first delinquent support payment. CP 1-2. The applicable statute of limitation is 10 years, RCW 6.17.020, so the action should not be barred by laches absent "unusual circumstances." Id. at 270.

Under the circumstances in this case, Mrs. Kukes' delay was not unreasonable.

Furthermore, Mr. Slane has not shown any damage resulting from Mrs. Kukes' delay. He cannot be said to be "damaged" simply by having to do now what he was legally obligated to do years ago. See, Hunter, 52 Wn.App. at 271. Merely showing that the noncustodial parent incurred financial obligations in itself does not demonstrate the type of damage required by the doctrine of laches. Id. at fn. 1. Rather, Mr. Slane must demonstrate some change of position which would make it inequitable to allow Mrs. Kukes to enforce her claim. See, id. at 271. This he has not

record.

done. Thus, the trial court did not error by not *sua sponte* applying the principle of laches.

b. Equitable Estoppel

The doctrine of equitable estoppel is applicable when a person, by her acts or representations, causes another to change his position to his detriment. Hunter, 52 Wn.App. at 271. In such a case, the person who performs such acts or makes such representations will be precluded from asserting to her own advantage the conduct or forbearance of the other party. Id. at 271. The party who asserts equitable estoppel must establish:

- (1) an admission, statement, or act inconsistent with the claim afterward asserted;
- (2) action by the other party on the faith of such admission, statement, or act; and
- (3) injury resulting from allowing the first party to contradict or repudiate [such admission, statement, or act].

Id. at 271.

“Courts do not favor equitable estoppel, and the party asserting it must prove every element with clear, cogent, and convincing evidence.” Barber, 106 Wn.App. at 396.

In this case, Mr. Slane has failed to establish an “admission, statement, or act” inconsistent with Mrs. Kukes’ claim for child support. He states that Mrs. Kukes agreed to a lower amount of child support, but it is undisputed that she continued to request support payments. CP 10-11. It

is likewise undisputed that Mrs. Kukes never released Mr. Slane from his support obligation. Furthermore, as discussed above in connection with the issue of laches, Mr. Slane has failed to demonstrate any “injury” other than having to do now what he was legally obligated to do years ago.

Moreover, Mrs. Kukes isn’t contradicting or repudiating any “statement, admission, or act.” On the contrary, the trial court held her to the 2003 Agreement and the 2004 Agreement. It is Mr. Slane who is attempting to repudiate and contradict his prior statements and acts.

The emails did not show that Mr. Slane was current on child support payments. CP 16. Even if it did, there’s no reason it must bar the trial court from ordering Mr. Slane to pay back child support for the months prior to February 2004. There was no abuse of discretion here.

As noted above, there are no special circumstances here justifying application of equitable estoppel or laches. Mr. Slane doesn’t show or even allege unreasonable delay by Mrs. Kukes. Nor does he establish harm. Mr. Slane’s last assertion regarding this issue is incoherent and will not be responded to. App.’s Brief at 14.

Without argument or citation to authority, Mr. Slane asserts that “[t]he contract Mrs. Kukes withheld from the court also should have provided an estoppel to a greater extent than it did.” App.’s Brief at 14.

“Contentions unsupported by argument or citation of authority will not be considered on appeal.” In re Marriage of Wallace, 111 Wn.App. 697, 706, 45 P.3d 1131 (2002).

Why Mrs. Kukes “should not have been permitted to seek anything predating the contract,” as well as “no amount other than the monthly amount stated in the contract,” is not explained by Mr. Slane.

Mr. Slane’s argument that Mrs. Kukes was “bound in the contract to not try and seek more than the amount agreed upon” is, of course, contrary to well established law and public policy. See, e.g., Hartman, 100 Wn.2d at 767-70.

Even though the parties’ 2003 Agreement is void as a matter of public policy, the trial court nonetheless did not award Mrs. Kukes \$878 per month in back child support during the duration of said Agreement. The trial court limited the amount of past due child support to \$500 per month for August 2003 until February 2004, and consequently awarded Mrs. Kukes judgment of \$500 for each month Mr. Slane did not pay child support. CP 151. Thus, the trial court did precisely what Mr. Slane *now* argues it should have done.

Mr. Slane’s final argument regarding In re Marriage of Barber, 106 Wn.App. 390, 23 P.3d 1106 (2001), is completely frivolous and

nonsensical. App.'s Brief at 13. As such, Mrs. Kukes will not respond to it.

F. The Amounts Of The Trial Court's Awards For Child Support Arrearages Were Not An Abuse Of Discretion.

1. Standard of Review.

“We have repeatedly held that the findings of a trial court, entered upon conflicting evidence, will be approved on appeal unless the evidence clearly preponderates against them.” Ferris v. Blumhardt, 48 Wn.2d 395, 399, 293 P.2d 935 (1956). “If the judgment of the trial court is based upon an erroneous ground, it will be sustained if correct upon any ground within the pleadings and established by the proof.” Blumhardt, 48 Wn.2d at 400. “Where a judgment or order is correct, it will not be reversed because the court gave a wrong or insufficient reason for its rendition.” Kirkpatrick v. Dept. of Labor & Industr., 48 Wn.2d 51, 53, 290 P.2d 979 (1955). Furthermore, appellate courts accord great deference to the determination of the trial courts of complex accounting questions in equitable proceedings. Coy v. Raabe, 77 Wn.2d 322, 326, 462 P.2d 214 (1969).

2. Argument.

The judgment amounts in the orders of contempt do not have overlapping time periods. Nor do “they overlap with the Commissioner’s

approved temporary child support order.” App.’s Brief at 13. Nor was child support “paid twice for August 2008, January 2009, February 2009, March 2009 and April 2009.” App.’s Brief at 13.

Though the second order of contempt lists the month of August 2008, this was merely a scrivener’s error. CP 146. As the judgment amount in the second order shows, Mrs. Kukes was not awarded any monies for the unpaid child support of August 2008. CP 147. Mr. Slane was not given a separate contempt citation for each month he failed to pay child support. CP 145-147. As such, the scrivener’s error in the second order of contempt was harmless.

Despite submitting a lengthy declaration delineating his disagreements to the proposed Orders of Contempt, Mr. Slane did not object to this scrivener’s error. CP 201-205. Nor has he brought it to the trial court’s attention since entry of the Order. See, CR 60(a). “Failure to make such a motion when it would enable the trial court to correct its error precludes raising the error on appeal.” Smith v. Shannon, 100 Wn.2d 26, 37, 666 P.2d 351 (1983). As such, Mr. Slane waived any objection to this harmless scrivener’s error.

Also, Mr. Slane never argued to the trial court he is entitled to a reduction as a result of the split-custody arrangement. At the hearing, the

trial court *sua sponte* reduced the monthly child support payments by 50% during the period of split custody. RPII 9-10. This obviously inured to Mr. Slane's benefit. Yet Mr. Slane has the audacity to complain about this. The trial court did not abuse its discretion by not retrospectively reducing Mr. Slane's monthly child support obligation to \$225.

Mr. Slane's argument regarding the \$35,076 and \$26,076 back child support amounts is incoherent and baffling. Mrs. Kukes is unable to respond to it and she therefore objects to it.

Contrary to Mr. Slane's bald assertion, Mrs. Kukes did adhere to the trial court's oral rulings regarding the amounts of back child support. The record clearly shows the trial court orally ruled that Mr. Slane's child support arrearages were \$35,076, but then stated that that amount must be reduced to reflect the split custody arrangement from June 2005 until June 2008. RPII 10. The trial court ruled that from June 2005 until June 2008, the monthly child support amount should be reduced by 50%, *i.e.*, from \$600 per month to \$300. RPII 10. This resulted in a total reduction of \$9,000. Thus, \$35,076 minus \$9,000 equals \$26,076. This is precisely the amount the trial court orally ruled and the amount specified in the trial court's order. CP 146.

Once again, Mr. Slane complains the trial court didn't allow "either party to make any submissions" regarding the child support amount during the split custody period. App.'s Brief at 14. Neither party argued this issue to the trial court. Mr. Slane never requested a continuance in order to submit such evidence. He never indicated to the trial court that he had any such evidence. He had more than six months during which to make said submissions but failed to do so.

As noted above, Mr. Slane's assertion that the 2003 Agreement is legally binding is meritless and contrary to well-established law. See, e.g., Hartman, 100 Wn.2d at 767-70.

Mr. Slane cites In re Marriage of Arvey, 77 Wn.App. 817, 894 P.2d 1346 (1995), to support his argument that the trial court erred in determining the "split custody child support amount." App.'s Brief at 14. However, his reliance on Arvey is misplaced. Arvey dealt with prospective child support amounts, not child support *arrearages*.

Mr. Slane further complains the trial court "failed to consider any expenses actually paid for the care of the child in Mr. Slane's care." App.'s Brief at 14. As noted above, this is not surprising as Mr. Slane submitted absolutely no evidence or information regarding any expenses

actually paid for ES. This is because this issue was never raised with the trial court.

Mr. Slane's remaining arguments in this section are incoherent and confusing. As such, Mrs. Kukes is unable to address them.

G. The Trial Court Did Not Act Through Bias Nor Without Jurisdiction.

1. RAP 2.5(a).

Under RAP 2.5(a), an “appellate court may refuse to review any claim of error which was not raised in the trial court.” In re Marriage of Wallace, 111 Wn.App. 697, 705, 45 P.3d 1131 (2002). “Furthermore, Washington courts have applied the doctrine of waiver to bias and appearance of fairness claims.” Wallace, 111 Wn.App. at 705; see also, First Nat. Bank v. Parker, 28 Wash. 234, 237, 68 P. 756 (1902) (“The objection that the judge pro tem was not sworn is not available here, because not raised in the record by *seasonable* objection.”) (emphasis added); Impero v. Whatcom County, 71 Wn.2d 438, 430 P.2d 173 (1967).

Since the present case was tried without a jury, a motion for recusal or to vacate would have permitted the trial court to correct its errors, if any. Mr. Slane did not do so until four months after the orders were entered and nearly a year after the first hearings. CP 168-169.

Further, Mr. Slane has never raised the issue of vacating the orders with the trial court.

Consequently, Mr. Slane waived this issue by failing to timely bring his allegations before the trial court and to seek recusal. Further, the Court ought to refuse to review this claim of error because Mr. Slane did not raise it with the trial court.

2. Standard of Review.

“Recusal is within the sound discretion of the trial court.” In re Parentage of J.H., 112 Wn.App. 486, 496, 49 P.3d 154 (2002).

3. Argument.

“To prevail under the appearance of fairness doctrine, the claimant must provide some evidence of the judge’s ... actual or potential bias.” In re Marriage of Wallace, 111 Wn.App. at 706 (quoting, State v. Dugan, 96 Wn.App. 346, 354, 979 P.2d 885 (1999)). Prejudice is not presumed. Wallace, 111 Wn.App. at 706. “After a claimant presents sufficient evidence of potential bias, we consider whether the appearance of fairness doctrine was violated.” Id. at 706. The test is whether a reasonably prudent and disinterested observer would conclude that the claimant obtained a fair, impartial, and neutral trial. Id. at 706.

Here, Mr. Slane doesn't point to any conduct or comments by the trial court. Rather, his sole allegations are that Commissioner Chlarson and Mrs. Kukes' counsel had a private relationship. CP 112. This is sheer speculation. Commissioner Chlarson and Mrs. Kukes' counsel have never had any contact whatsoever outside the courtroom. CP 170-171. Commissioner Chlarson denied Mr. Slane's Motion to Recuse, but then recused herself when Mr. Slane filed a Motion for Reconsideration.

Mr. Slane cites to United States v. Scuito, 531 F.2d 842 (7th Cir. 1976), to support his argument that the proper remedy for cases involving a biased judge is to void the judge's orders. App.'s Brief at 14. However, that case merely stands for the proposition that orders issued by courts lacking subject matter and personal jurisdiction are void.

Likewise, Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683 (1974), has absolutely nothing to do with a judge's bias.¹⁰ App.'s Brief at 15. That case is solely about state officers' immunity from suits in federal district court under the Eleventh Amendment to the United States Constitution. It does not, in any manner, support the proposition that a biased judge's orders are void and a nullity.

¹⁰ Mr. Slane's use of the language from Scheuer v. Rhodes in his Brief is misleading.

H. The Trial Court's Orders Are Not Invalid Under CR 54 Or The Due Process Clause.

1. RAP 2.5(a).

Under RAP 2.5(a), an “appellate court may refuse to review any claim of error which was not raised in the trial court.” In re Marriage of Wallace, 111 Wn.App. 697, 705, 45 P.3d 1131 (2002).

Mr. Slane did not raise this issue with the trial court.¹¹ “This court has consistently held that cases on appeal must be decided on the record made in the trial court and that we can only consider evidence presented in the record.” State v. Davies, 73 Wn.2d 271, 276, 438 P.2d 185 (1968).

As such, this Court should refuse to review this claim of error.

2. Argument.

Rule 54(f)(2) provides, in relevant part:

No order or judgment shall be signed or entered until opposing *counsel* have been given 5 days' notice of presentation and served with a copy of the proposed order or judgment . . .

“A judgment entered without the notice required by CR 54(f)(2) is not invalid, however, where the complaining party shows no resulting prejudice.” Burton v. Ascol, 105 Wn.2d 344, 352, 715 P.2d 110 (1986);

¹¹ Though Mr. Slane filed a Motion to Vacate on August 18, 2009, the Show Cause hearing of October 2, 2009 was administratively struck. Mr. Slane has yet to reschedule the Show Cause hearing.

City of Spokane v. Landgren, 127 Wn.App. 1001, 107 P.3d 114w (2005);
In re Marriage of Chua, 149 Wn.App. 147, 158, 202 P.3d 367 (2009).

Here, Mr. Slane's assertion that "Mr. Chase did not serve Mr. Slane with the orders he presented to the court" is extremely disingenuous and grossly misleading. App.'s Brief at 15, 6. On April 2, 2009, Mrs. Kukes' husband personally handed Mr. Slane copies of all eleven proposed orders. CP 190. Mr. Slane does not deny this fact. Moreover, Mr. Slane's lengthy declaration regarding the proposed orders clearly shows he was provided copies of all eleven proposed orders. CP 201-204. For example, Mr. Slane averred that:

The proposed orders *given to me by Mr. Chase* also originally referenced "Supervised" visitation, though the word was stricken by hand when giving (sic) to the respondent.

CP 204. (Emphasis added).

Clearly, Mr. Slane did in fact receive copies of the proposed orders.

Also, the proposed orders provided to Mr. Slane did not differ from those actually presented to the trial court.

Furthermore, as shown by the email regarding entry of the orders, Mr. Slane received copies of the orders within two weeks of their entry. Therefore, he cannot claim prejudice by the lack of notice; he had

adequate time to plan for and file his notice for discretionary review. See, e.g., Landgren, 127 Wn.App. at 1003.

It is immaterial that Mr. Slane did not receive five days' notice of the continued presentment hearing before entry. He was not prejudiced by a lack of opportunity to contest those orders because the orders contain, unambiguously, the court's rulings for which Mr. Slane was present.

The most compelling evidence of Mr. Slane's lack of prejudice is that Mr. Slane believed the trial court was to enter the orders on April 10. The fact that the orders were not entered until April 17 actually inured to Mr. Slane's benefit as it provided him with additional time to file a motion for revision or appeal. Mr. Slane has not shown—or even argued—prejudice as he must to invalidate the entry of the orders.

Mr. Slane resides 2,000 miles away in St. Louis, Missouri. He did not appear for the April 10 presentment hearing. If he had, he would have known the hearing was continued one week to April 17. His failure to appear at the original presentment hearing constitutes a waiver of notice of the continued presentment hearing.

In addition, Mr. Slane does not allege he would have appeared for the continued presentment hearing of April 17. This is because he wouldn't have, for he resides 2,000 miles away. Nor does Mr. Slane

allege he would have submitted additional arguments by declaration. This is because Mr. Slane fully aired all his disagreements with the proposed orders in his declaration of April 7.

Mr. Slane's argument that the lack of notice as to the continued presentment hearing caused him to miss the deadline to file a motion for revision is absolutely absurd. The fact that he failed to do so despite the extra seven days was solely the result of his own negligence.

In addition, the judgments entered on April 17 are not "many thousands of dollars more than the court ruled." App.'s Brief at 16. As noted above, the judgments are the exact same amounts the trial court orally ordered. CP 145; CP 150.

In any event, CR 54(f)'s notice requirements only apply if the losing party is represented by "counsel."

The court will apply canons of statutory interpretation when construing a court rule. State v. Robinson, 153 Wn.2d 689, 692, 107 P.3d 90 (2005). The plain language of a court rule controls where it is unambiguous. Robinson, 153 Wn.2d at 693. "Plain meaning is determined from the ordinary meaning of the language used." Bostain v. Food Exp., Inc., 159 Wn.2d 700, 708, 153 P.3d 846 (2007). Ambiguity exists if the

language is susceptible to more than one reasonable interpretation. Limstrom v. Ladenburg, 138 Wn.2d 595, 606, 963 P.2d 869 (1998).

The drafters of CR 54(f) specifically employed the word “counsel,” not party or litigant. The word “counsel” is plain and unambiguous.¹² Therefore, it is not susceptible to interpretation. Mr. Slane does not fit the ordinary definition of “counsel.” As such, under the plain and unambiguous language of CR 54(f), he was not entitled to notice of presentment.

Contrary to Mr. Slane’s assertion, there were no “irregularities in the orders and rulings.” App.’s Brief at 16. The only “irregularities . . . in the circumstances” were due to the fact that Mr. Slane resided 2,000 away.

In short, Mr. Slane was provided a full and fair opportunity to contest the proposed orders. Mr. Slane did in fact take full advantage of the opportunity.

¹² Meriam-Webster Dictionary defines “counsel” as “(1) : a lawyer engaged in the trial or management of a case in court (2) : a lawyer appointed to advise and represent in legal matters an individual client or a corporate and especially a public body.” Merriam-Webster’s Dictionary of Law (1996).

I. Mrs. Kukes Is Entitled To Her Costs And Attorney Fees On Appeal.

Mrs. Kukes seeks costs and attorney fees on appeal under RCW 26.18.160:

In any action to enforce a support or maintenance order under this chapter, the prevailing party is entitled to a recovery of costs, including an award for reasonable attorney fees.

RCW § 26.18.160 (2010).

This rule encompasses both actions at trial and on appeal. See, In re Marriage of Capetillo, 85 Wn.App. 311, 932 P.2d 691, review denied, 132 Wn.2d 1011, 940 P.2d 654 (1997).

If the Court decides this appeal in Mrs. Kukes' favor, then she is entitled to such an award without showing financial need or Mr. Slane's ability to pay. See, e.g., In re Marriage of Anderson, 49 Wn.App. 867, 746 P.2d 1220 (1987). Accordingly, the Court should award her reasonable costs and fees, as detailed in the Declaration of Brian Chase and accompanying exhibits.

IV. CONCLUSION

For the reasons stated above, Mrs. Kukes respectfully requests that the Court affirm the trial court's orders of contempt of court and award Mrs. Kukes reasonable costs and fees.

DATED this 13th day of DECEMBER 2010.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "B. Chase", written over a horizontal line.

BRIAN CHASE, WSBA#: 34101
Attorney for Respondent