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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
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No. 327876

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

JOSHUA PEZZULLO, PETITIONER-APPELLANT

vs.

REBECCA PEZZULLO, RESPONDENT

PETITIONER-APPELLANTS' BRIEF

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Table of Authorities

1. ***In re the Support of Jane DOE***, 38 Wash.App. 251, 254, 684 P. 2d 1368.

ASSIGNMENTS OF ERROR

The appellant assigns the following errors:

1. The Commissioner applied the wrong law in determining that RCW 26.26.*et seq* governs this case rather than RCW 26.09.*et seq*.

ISSUES

The issue before the Court is whether the Commissioner was correct in her ruling that Child Support controlled by in this case RCW 26.26.134.

STATEMENT OF THE CASE

The parties to this action married, had a son in 1999, and then divorce in 2002 in Louisiana. In that divorce no visitation schedule or Parenting Plan was entered. Until 2013, Mr. Pezzullo was in the military and also served as a military contractor. During the years between 1999 and 2013, Mr. Pezzullo visited his son, his parents visited with his son, and he provided period support as requested by the mother. Mother never remarried and continued to live with her parents in Grandview where she teaches school. Mr. Pezzullo remarried and is the father of two children, he lives in Michigan.

In the spring of 2013, Mr. Pezzullo filed to establish a Parenting Plan because mother did not want the 14 year son to go to spend extended time with Mr. Pezzullo in the summer. Mother resisted the request for visitation and first alleged that Mr. Pezzullo did not have a relationship with his son. That claim was refuted when the child met with a counselor who found that father and son had an existing bond. Ultimately a Temporary Parenting Plan was agreed entered in this matter.

This matter was brought before the Court to establish a Parenting Plan. The parties were married and a child was born during the marriage. The child was born in 1999. There has never been any affidavit of paternity or blood tests to establish paternity. It was not necessary because the child was born during marriage and by operation of law paternity was established and has never been challenged by anyone. The parties divorced in 2002 and no Parenting Plan was adopted by any Court. However, the parties did provide for visitation by agreement. Father bonded with the child and had visitation when he was in the local area from overseas. When father was no longer employable because of the changes in government funding and government policy he returned to school in Michigan. When he tried to establish regular age appropriate visitation with his son, his former wife denied him the opportunity. Mr. Pezzullo had to bring the action to establish a Parenting Plan. In response, Mother sought child support and resisted any appropriate visitation. The Court declined to consider equitable evidence. **RP 29.** The Court determined child support and did not provide for any deviation for additional children. The Court rejected evidence of the household circumstances of mother and father. The Court also held that RCW 26.26.134 applied and ordered back support to be determined for five years prior to the filing. **RP 30.**

ARGUMENT

RCW 26.26.134. The statute requires that an action for a Parenting Plan be brought according to RCW 26.26. et seq., Commissioner Stam interpreted it to mean that child support is controlled by the same statute and that allows for retroactive child support.

Clearly an action for a Parenting Plan must be brought under RCW 26.26 et seq. because it is explicitly mandated. However, the issue of child support is not required to be determined by the Paternity Statute.

“The primary issue in a paternity action is whether the defendant is in fact the father; the issue of support is ancillary.” *In re the Support of Jane DOE*, 38 Wash.App. 251, 254, 684 P. 2d 1368.

The reason that the issue of child support is “ancillary” is because the Court does not have jurisdiction over person who should pay until a legal relationship (paternity) is established. That is not true where the parties are married. The Court has jurisdiction from time of separation forward. There is no need to go back in time to establish some kind of past due support obligation. Where the parties are not married, the legislature has given the courts the authority to establish retroactive child support and unlike, in a marital situation, the Court can require a person to reimburse for child birth costs.

RCW26.26.134 provides for child support to reach back for up to 5 years prior to the filing of the Petition. There is no similar provision for reaching back prior to the filing of the Petition contained in any section of **RCW 26.09**. Why is that? Because as noted above, determination of who the parent is, is of primary importance. There is no possibility of establishing an obligation to pay child support before paternity is established. In a dissolution action, child support relates from the beginning of the filing of the action because there is clear legal basis for establishing the obligation to pay support. In a divorce even if the parties have been physically separated for a long period of time, the legal support obligation does not attach until the divorce is commenced.

The law is clear that the standards for determining child support between parents and standards for determining child support in parentage are quite different.

It is helpful to read the title on the statute: “*Support orders — Time limit, exception.*” If the “time limit, exception” is an exception, then what is it an exception to? The answer is clear, that it specifically extends the statute of limitation to five years. This provision is in the law because without it the Court could not go beyond the time when paternity is established. Before paternity is established, the Court does not have the jurisdiction over the father to establish child support. That is not the case where the parties were married.

The law does NOT tie the parenting plan and the child support together. It is clear as set forth in **RCW 26.26.130**:

*“(7) On the same basis as provided in chapter 26.09 RCW, the court shall make residential provisions with regard to minor children of the parties, except **that a parenting plan shall not be required unless requested by a party.**”*

Jurisdiction to enter an Order establishing back child support is only available where provided for by statute. A parent is required to use RCW 26.26 requires anyone who wants a parenting plan to use the statute. But that does not mean that the court can apply different portions of the statute, as it did in this case.

CONCLUSION

Respectfully, the court should strike all portions of the final order dealing with back child support, because the Court exceeded its authority.

Respectfully submitted this 15th day of June, 2015



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CERTIFICATE OF SERVICE

I declare under penalty of perjury that a true copy of the appellant brief was mailed, via U.S. Mail, June 15, 2015, to opposing counsel, Benjamin Dow, 1060 Jadwin Ave, Suite 125, Richland, WA 99352; and mailed to the Clerk of the Court of Appeals, Division III, at 500 Cedar ST Spokane, WA 99201.

Dated this 15th day of June, 2015



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