

No. 63513-1-I

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COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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PAVEL KAMYSHIN,

Appellant,

v.

ALLA KAMYSHINA,

Respondent.

2009 DEC -3 PM 12:46  
STATE OF WASHINGTON  
COURT OF APPEALS  
DIVISION I

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APPEAL FROM SUPERIOR COURT OF KING COUNTY

HONORABLE KIMBERLY PROCHNAU, JUDGE

KING COUNTY SUPERIOR COURT CAUSE NO. 08-3-02818-0 KNT

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BRIEF OF APPELLANT

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Pavel Kamyshin  
Pro Se  
35832 9th Ave SW  
Federal Way, WA 98023

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## **I. ASSIGNMENTS OF ERROR**

### **A. ASSIGNMENT OF ERROR NUMBER ONE: THE TRIAL**

**COURT ERRED IN ENTERING ITS FINDING OF FACT THAT THE HUSBAND FAILED TO PROVE HIS BUSINESS EXPENSES IN CALCULATING HIS NET INCOME FOR THE ORDER OF CHILD SUPPORT**

## **II. ISSUES PERTAINING TO ASSIGNMENT OF ERROR**

- A. Are the trial court's findings supported by substantial evidence in the record?
- B. Did Mr. Kamyshin adequately substantiate by clear, cogent, and convincing evidence his deductions used to calculate his net income?

## **III. STATEMENT OF THE CASE**

Pavel Kamyshin married Alla Kamyshina on 06/12/1993 and separated in February, 2008. The couple has five children: Joseph, age 2, David, age 5, Mark, age 7, Milena, age 12, and Liana, age 14. The sole issue in dispute is the trial court's calculation of income for the father. Mr. Kamyshin testified that his monthly gross income was \$1,200 from wages, \$1,480 from business income, and that he claimed monthly

business expenses of \$944.00. Mr. Kamyshin presented a financial declaration and a 2007 tax return from which the monthly business expenses were derived. Mr. Kamyshin testified regarding his business expenses. He stated that he estimated his expenses by adding up the charges from his business credit card (RP 5), and that his monthly expenses go towards buying materials and tools such as a saw, drill, and other electric appliances or gadgets (RP 10). Mr. Kamyshin also testified in detail about his \$300.00 per month gas expenses, stating that he drives 100 miles a day in a four day work week getting an average of 15 miles to the gallon. (RP 7-9).

On March 19, 2009, the trial court entered findings of fact, decree of dissolution, parenting plan, child support order, and child support worksheets. The trial court determined that based upon these figures for Mr. Kamyshin's monthly automobile expenses, he did, indeed, have \$300.00 per month expenses for business related automobile expenses. (RP 20). The trial court further found that Mr. Kamyshin had failed to establish the other \$600.00 dollars in monthly business expenses because he had not presented adequate proof in the form of records. (RP 20). Further, the trial court estimated that his total monthly business expenses, including auto, were \$600.00 per month. (RP 20, 21).

This appeal timely follows the trial court's entry the parties' dissolution.

#### IV. ARGUMENT

A child support obligation imposed by a trial court is reviewed under the abuse of discretion standard. A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). The child support obligations of divorcing parents are calculated under RCW 26.19 by (1) computing the total income of the parents, (2) determining the standard child support level from the economic table, (3) deciding whether to deviate from the standard calculation (based upon the statutory factors), and (4) allocating each parent's support obligation. Marriage of Crosetto, 82 Wn. App. 545, 560 (1996).

The substantial evidence standard is applied to a review of factual determinations made by a judge or jury. Because family law matters are not submitted to a jury, the substantial evidence standard is applied in family law cases to the findings of fact made by the trial judge. As long as the findings of fact are supported by substantial evidence, they will not be disturbed on appeal. Thorndike v. Hesperian Orchards, Inc., 54 Wn.2d 570, 343 P.2d 183 (1959).

Substantial evidence is evidence sufficient to persuade a fair-minded person of the truth of the declared premise. In re Marriage of Hall, 103 Wn.2d 236 246, 692 P.2d 175 (1984). Disputed evidence is deemed “substantial” if it presents “any reasonable view [that]

substantiates [the trial court's] findings, even though there may be other reasonable interpretations.” Fred Hutchinson Cancer Research Center v. Holman, 107 Wn.2d 693, 713, 732 P.2d 974 (1987). Findings of fact entered in support of a judgment establishing a child support obligation are reviewed to determine if they are supported by substantial evidence in the record. Marriage of Casey, 88 Wn. App. 662 (1997); Dorsey v. King County, 51 Wn. App. 644, 668-69 (1988).

Mr. Kamyshin bears the burden of proving his income deductions are valid by clear and convincing evidence. Under a “clear, cogent and convincing evidence” burden of proof, the fact finder’s determination of an ultimate fact will be upheld on review “if supported by substantial evidence which the lower court could reasonably have found to be clear, cogent, and convincing.” In re Det. of LaBelle, 107 Wn.2d 196, 209 (1986).

RCW 26.19.071(2) requires each party to produce tax returns for the preceding two years “to verify income.” Under RCW 26.19.071(5)(h), justification of normal business expenses and self-employment taxes for self-employed persons is not required for any business expense deduction about which there is disagreement. While this should not mean this statute evinces a legislative intent to limit the information a trial court considers when determining a party’s income, it does set forth a statutory basis for when justification of business expenses are required. They are required in the event of disagreement.

In the case at bar, Mr. Kamyshin presented his financial declaration, tax return, and testimony regarding his income and business expenses. The financial declaration and tax return were admitted into evidence without objection from the mother. The financial declaration was submitted under penalty of perjury as accurate and Mr. Kamyshin testified as to its veracity. Furthermore, during trial, there was no apparent disagreement to the entry of the amount of Mr. Kamyshin's business expenses into evidence by the mother. Thus, there was no apparent or actual disagreement as to the accuracy of these expenses. Thus, the trial court manifestly abused its discretion in finding that the business expenses lacked adequate proof.

The business expenses should have been found to have been substantiated by adequate proof by substantial evidence under RCW 26.19.071(2). Strangely, the trial court inquired of Mr. Kamyshin regarding the amount of his claimed expenses for his automobile. The trial court found Mr. Kamyshin credible regarding his estimated \$300.00 per month gasoline expenses based on testimony alone. Those expenses, however, were substantiated only by testimony without any documentation. The trial court, thus, further manifested an abuse of discretion by accepting proof of certain expenses by testimony but denying proof of other expenses by testimony.

Last, the trial court gave no rationale for its findings regarding the business expenses, hypothesizing that other expenses must be minimal for

Mr. Kamyshin's automobile because he is handy with cars, rejecting Mr. Kamyshin's business expenses as unreasonable without any clear finding as to why, and arbitrarily assigning an amount of business expenses to Mr. Kamyshin that was contrary to the evidence presented. (RP 20, 21).

## V. CONCLUSION

Mr. Kamyshin should have been allowed to claim \$944.00 in normal and necessary business expenses in the calculation of his net income for purposes of child support. The amount of these expenses were taken from Mr. Kamyshin's 2007 tax return, were sworn to under penalty of perjury in his financial declaration admitted to the court, were supported by Mr. Kamyshin's testimony that was consistent and credible, and was not objected to by the opposing party. Either this court should remand to the trial court for additional findings regarding Mr. Kamyshin's business expenses, or this court should order that Mr. Kamyshin's child support be recalculated based upon business expenses of \$944.00.

Respectfully submitted this 3rd day of December, 2009.

  
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Pavel Kamyshin

CERTIFICATE OF SERVICE

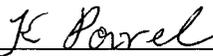
A copy of the foregoing document was served on:

Alla Kamyshina  
3004 41 Ave S., Auburn, WA 98001

State of Washington, Prosecuting Attorney  
516 4rd Ave, Seattle, WA 98104

by serving the same on December 3, 2009 at the foregoing address.

Signed at Federal Way, WA on December 3, 2009

  
\_\_\_\_\_  
Pavel Kamyshin

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STATE OF WASHINGTON  
CLERK OF COURT