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No. 64007-1

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

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WARE, JACQUELINE  
Appellant,

V

COLLINS, TIMOTHY AND DSHS,  
Respondents.

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**APPELLANT'S REPLY BRIEF**

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Jacqueline A. Ware  
Appellant  
4627 43 Avenue South  
Seattle, WA 98118

*ORIGINAL*

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DIVISION ONE  
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## CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on this date I caused to be mailed in U.S. mail service a copy of the within and foregoing documents upon the following persons:

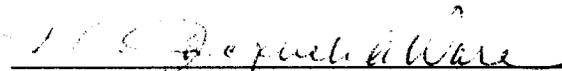
Timothy Collins  
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Mr. Scott Majors, AAG  
WSBA No. 20203  
3501 Colby Avenue, Suite 200  
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### Documents

Ware's Reply Brief, Table of Contents, Table of Authorities, and Declaration of Service

Dated this 25<sup>th</sup> day of March, 2010



Jacqueline A. Ware, Pro se Appellant  
4627 43 Avenue South, Seattle, WA 98118  
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Ware v Collins & DSHS

Case 64007-1

COMES NOW the Appellant (Ware) and files this Reply in Support of her appeal and request for remand and award of costs and fees.

I. RELIEF REQUESTED

1. Ware requests that the Court find Snohomish County Superior Court Judge Weiss erred in failing to remand the Petition for Judicial Review back to the Administrative Law Judge for failure to produce the transcript of proceedings in violation of RCW 34.05.566(2), RCW 34.05.476 (1) (2) (h), RCW 34.05.476 (2), and *Cascade Nursing Servs., Ltd v Employment Sec.. Dept*, 71 Wn. App. 23. 856 P.2d 421 (1993). *The court views finding of fact under the clearly erroneous standards of review in light of the entire record.*

RCW 34.05.570 (3) (e ) provides that a court may grant relief from an agency order when the order “is not supported by evidence that is substantial when viewed in light of the whole record before the court.”

2. Find the Snohomish County Superior Court Judge erred by conducting a trial de novo in violation of RCW 34.05.588.

In reviewing an administrative decision under error of law standard, the court can substitute its judgment for that of the administrative body. *Davis v Depart. of Empl., Sec.*, 108 Wn.2d 272, 737 P2d 1261 (1987). However, the matter before this court does not rise to this level as there was no transcript of proceedings for the Superior Court to review de novo to determine if an error of law occurred or if the ALJ violated the reasonableness and lawfulness standard.

3. Find the Snohomish County Superior Court Judge erred by failing to award costs and fees; contingent on remand. Ware claimed DSHS' actions constituted wrong doing (willfully ignoring controlling case law and statute), and frivolous in violation of RCW 4.84.185.
  
4. Find the Snohomish County Superior Court erred in failing to remand due to the reasonableness and lawfulness standard when Ware stated that the ALJ's Findings and Conclusions of Law were arbitrary and capricious. CP 13 *Sherman v Moloney*, 106 Wn.2d 873, 725 P.2d 966 (1986). *Eiden v Snohomish Civil Serv. Comm'n*, 13 Wn. App. 32, 533 P.2d 426 (1975). Ruling was arbitrary and capricious and unreasoning without consideration of the facts and circumstances and testimony presented at the hearing, and in disregard of Judge Craighead's order of October 2007.

II. SUMMARY OF ARGUMENT RE COLLINS BRIEF

1. In Collins Statement of the Case and Issues Presented, Collins concurs and supports Ware's position that a trial de novo was conducted by Judge Weiss on June 5, 2009.
2. Collins admits and supports Ware's position that Judge Susan Craighead permitted a copy of the face of the check as proof of payment.
3. Collins states that Judge Craighead committed error by allowing a copy of the face of the check as proof of payment.
4. Collins claims Ware never provided a copy of the cancelled check verifying proof of payment for violin lessons.
5. Collins requests legal preparation fees.

III. WARE'S RESPONSE TO COLLINS BRIEF

1. Collins agrees with Ware's position that Judge Weiss conducted a trial de novo without benefit of the entire/whole record.

Collins states in his brief, *"in this case, inadequate documentation was presented before the court by Ms. Ware, which allegedly shows proof of payment made to the violin instructor, Mr. Quinton."* [ Mr. Quinton has his doctorate and his correct name and title is, Dr. Quinton Morris].

2. Collins admits and supports Ware's position that Judge Craighead permitted a copy of the face of checks as proof of payments during the October 2007 modification hearing.

The ALJ and Judge Weiss failed to accept the same proof of payment for violin lessons and violin rental fees as Judge Craighead. *"Ms. Ware contends that since a higher court approved only showing a copy of the face of the check, (ALJ), Administrative Law Judge is required and bound to honor the higher courts ruling."* That is precisely what Ware is claiming. The lower tribunal is expected to comply with and is bound by any order and written decision of a superior court.

3. Collins states that in "October 2007, King County Superior Court Judge Susan Craighead made error allowing a copy of the face of the check which showed no authentic payment or endorsement received by Quinton Morris."

Collins is contending and claiming that a lower court was able to assign error to a higher tribunal's order and therefore, changed the intent and spirit of the order, thereby, substituting her Judgment for that of a Superior Court Judge by requiring a different standard and proof of payment. In addition, the electronic recording would have revealed that Collins testified differently at the hearing before the ALJ.

4. Collins claims that Ware never submitted proof of payment in the form of cancelled checks as ordered by Judge Weiss in his June 5, 2010 order. "Ware has been given more than adequate opportunity and extension to produce satisfactory proof of payment for the expenses in question and has failed to comply in every proceeding."

Clearly Collins isn't reading documents submitted to the court or forgets the contents of materials submitted to the court. Judge Craighead accept over a year's worth of checks paid to Dr. Quinton Morris as proof of payment and proof of payment in the

form of a cancelled check was submitted to Judge Weiss in compliance with his June 5, 2008<sup>9</sup> order. CP 32.

However, Collins still has failed to pay anything towards the violin lessons and violin rental fees. He remains substantially in arrears, which is precisely what Judge Craighead was attempting to avoid.

5. In Collins conclusion, he requests legal preparation expenses.

Collins substantially fails to comply with RAP 18.01 (b) as the request appears solely in the last sentence of the conclusion and therefore requests for fees and expenses must be denied.

IV. SUMMARY DSHS' RESPONSE TO APPELLANT'S BRIEF

DSHS devotes ten pages of its twenty-two page brief addressing the procedural history of the case and defining the role and responsibility of DSHS and the appellate court, but fails to cite any pertinent authority or provide any meaningful analysis to support their contention that a transcript of the electronic

recording “may not be necessary” or that there is “conflicting case law.” No conflicting case law is offered to the court by DSHS to support their claim.

DSHS saved its strongest argument for Ware’s request for costs and fees. Yet, even that is not in complete alignment with *Grundy v Brack Family Trust*, 116 Wn.App. 625, 631, 67 P.3d 500 (2003).

DSHS readily admits violation of RCW 34.05.566 (2), CP 54. However, they have proceeded with placing obstacles and roadblocks in the way of a fair and just resolution of Ware’s Petition for Judicial Review.

DSHS’ actions and conduct constitute willful obstruction of justice. Ware has requested costs and fees at every stage and phase of her Petition for Review citing numerous instances of wrongful acts by DSHS, including filing a brief in support of Collins motion to affidavit Judge Craighead while knowing that although

Ware timely requested a transcript, there was none available for the appellate court to consider. CP 203.

On September 18, 2008, AAG's office advised Ware that a tape recording of the hearing was defective and that no transcript of the hearing could be prepared for the superior court to review. CP 201. It was at that time that DSHS should have requested remand. DSHS never even attempted to agree to a set of facts to attempt to reproduce the record. It is now March 2010 and justice has yet to be served.

DSHS continues to defy controlling case law and statutes in their pursuit to avoid payment of costs and fees.

On October 16, 2008, Collins requested Change of Venue and Change of Judge, again disrespecting Judge Craighead in the same tone and temperament used during the hearing before the ALJ. CP 161-66. DSHS filed responses in joining Collins motions while knowing that the full record was not available.

State admits that on November 14, 2008, Counsel Michael Louden filed a memorandum opposing Collins motion for Change of Judge and Remand. CP 150-54. Instead of consulting with Louden in an attempt to resolve the issue without continued litigation, DSHS files a Reply in opposition to Louden's Response. Thus, Ware requests attorney fees.

DSHS admits in their own Response that the *"appellate court will not consider arguments that are not supported by pertinent authority or meaningful analysis."* Ware contends that this is precisely the position DSHS is in. They have failed to provide any case law or statutes to support their claim and position that the "whole record" is not required on appeal.

DSHS claims there is “conflicting case law” as to whether the failure of an agency to provide a transcript of an adjudicative proceeding mandated a remand for further proceedings, CP 61-62. However, DSHS fails to cite the conflicting case law. Thus, Ware requests costs and fees.

V. COSTS AND FEES

Ware may not have set aside a specific section to address the issue of costs and fees. However, Ware clearly addressed why costs and fees should be awarded and why they are appropriate and necessary in a case where DSHS has deliberately and intentionally ignored controlling case law and statutes resulting in excessive litigation.

Ware’s brief adequately raised the issue of costs and fees as it was weaved throughout the brief and not solely dependent on one line in the conclusion. Ware also cited *Fay v NW Airlines*; 115

*Wn.2d 194, 200-01, 796 P.2d 412 (1990)* in her Table of Authorities.

Further, DSHS cites the American Rule re attorney fees. The American rule has nothing to do with fairness and justice. The American rule is a controlling assessment of attorney's fees arising out of litigation. The American rule provides that each party is responsible for paying its own attorney's fees, unless specific authority granted by statute or contract allows the assessment of those fees against the other party. Under the American rule every party — even the party prevailing — must pay its own attorneys' fees. This rule contrasts with the English rule, under which the losing party pays the prevailing party's attorneys' fees.

Appellate review is limited to ensuring the agency exercised its discretion lawfully. Absence of the entire record prohibits the appellate court from determining if the agency exercised its discretion lawfully.

## VI. CONCLUSION

Ware truly believes that the Court is not so page cold and citation callous that it is willing to turn a blind eye to fairness and justice in the face of substantial evidence that DSHS ignored statutes and controlling case law; thus substantially delaying justice.

As a pro se litigant, I may be unable to follow procedures and guidelines in substantially the same manner as a seasoned trial attorney, but can be in reasonable and acceptable compliance.

Ware exercised restraint and discretion by not retaining counsel throughout the three year proceedings to avoid taking money (child support) from the children. However, DSHS has used staff and taxpayer's money to defend against their frivolous position. Thus, Ware requests costs and fees.

Ware comes before this court seeking justice based on several errors by Snohomish County Superior Court and wrong

doing by DSHS in their three year odyssey to avoid complying with the law.

DSHS' actions have resulted in the loss of violin lessons for the child they claim to advocate for as Ware could no longer afford the cost of lessons without compliance with Judge Craighead's order requiring payments from Collins.

Further, their actions have resulted in emotional distress for the Appellant; a case before the Court of Appeals is a challenging matter at best and the failure of the child to continue with violin lessons was devastating when Judge Craighead did everything within in power to avoid this situation. Thus, Ware requests costs and fees.

The heart and soul of Ware's argument on fees is cited throughout numerous briefs and the brief on appeal.

DSHS argues the lower court did not award costs and fees as Ware failed to prevail on the majority of her case.

Ware's argument to this court is that the lower court erred in failing to comply with unambiguous case law and statutes by failing to remand the matter back to the ALJ for further proceedings. Thus, Ware requests costs and fees.

If the lower court had complied with case law, the case would have been remanded and Ware would have been entitled to costs and fees.

Prolonged litigation seems to be a chronic issue for DSHS as it pertains to foster children and vulnerable adults. DSHS appears obsessed with prevailing rather than doing what is in the best interest of the children.

I may be unable to explain my position as eloquently as a lawyer, but I am able to address main issues to the best of my ability as an aggrieved party who has suffered wrong doing and as the parent of a child that has been harmed, not helped by the actions of DSHS.

VII. SUPPLEMENTAL COSTS AND FEES PAGE

Ware believes she is entitled to costs and fees per *Fay v NW Airlines* as DSHS' actions contributed to excessive litigation by filing frivolous briefs in the face of controlling case law that does not support their argument. This process would have been much shorter had DSHS admitted to the need for remand.

Instead, DSHS created additional problems and burdens for the appellant that were avoidable. Because of those actions, Ware has expended considerable time and resources attempting to preserve her rights and the child lost an opportunity to continue with violin lessons. Ware respectfully requests costs and fees in order to be made whole.

March 24, 2010      Ms. Joyce G. Ware  
PRO SE Appellant