

Court of Appeals Case No. 66351-8

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

JENNIFER (AYLOR) ELDRED

Respondent

V.

SCOTT AYLOR

Appellant

2011 MAY 12 8:10:24

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Appeal of Skagit County Superior Court Decision

RESPONDENT'S BRIEF

Jennifer Eldred
Respondent, Pro se
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A. TABLE OF AUTHORITIES

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B. INTROCUPTION AND CASE SUMMARY

Either Mr. Aylor is a deadbeat dad seeking to avoid his legal and moral duty to help support his children. Or he is mentally ill, refusing medicine and treatment for his mental illness, making it difficult for him to work to honor his debts and provide for his sons. Mr. Aylor adamantly denies his documented mental illness during his steadfast pursuit of legal relief from his financial duties to his children. He cannot be both mentally well and excused from his financial duty to his children. Either Mr. Aylor is mentally ill and should be afforded limited reduction in his financial responsibility, or Mr. Aylor is mentally well and must be held fully accountable. Since Mr. Aylor adamantly denies being mentally ill, the Court must find Mr. Aylor accountable and hold him finically liable for his sons per his previous financial obligations.

In the Order for Support [CP 9-21] Ms. Eldred agreed to defer child support for two years in lieu of a slightly higher amount (\$650 per month). In exchange, Mr. Aylor agreed to a minimum of pay half the daycare costs (about \$300 a month) for the [CP 18] first two years after the divorce was final during the two-year deferment period, and more when he could.

Instead of paying for half the day care and voluntarily paying what he could additionally to help support his children as he agreed, or seeking treatment for his mental illness, Mr. Aylor gave Ms. Eldred a total of \$100.

In September 2010, Mr. Aylor told Ms. Eldred he was not going to pay her any child support. Instead, Mr. Aylor informed Ms. Eldred he was going to attend the University of Washington on grants. Mr. Aylor then successfully petitioned Skagit County Superior Court to further reduce his financial obligation. On November 3, 2011, Skagit County court lowered his monthly child support obligation from \$650 to \$370 a month (or 21% of their monthly care), plus 21% of daycare (about \$120 a month) [CP 120-131]. Still dissatisfied with this ruling, Mr. Aylor has appealed the Skagit County decision to the Appellate Court for consideration and is requesting a further reduction on his financial obligation.

Mr. Aylor's appeal brief, the Brief of the Appellant filed March 2011, contains inaccurate statements. Inaccurate statements will be addressed in this Response Brief. The Brief of the Appellant will be referred to as AB, with page numbers noted, as AB – 1 for example.

Ms. Eldred has patiently waited for Mr. Aylor to seek treatment for his mental health issues, take medicine, and choose to work and be responsible for his own children and financial liabilities. Ms. Eldred deferred child support (not childcare or help with medical expenses) for two and a half years and picked up all the joint debt. Ms. Eldred sacrificed to cover childcare, medical insurance, clothes, mortgages, food, gas, etc. from the date of separation. Ms. Eldred did not seek enforcement when Mr. Aylor refused to pay a dime towards his half of more than \$13,000 in childcare expenses.

Mr. Aylor refused to provide medical insurance for his sons through his employer when asked to by Ms. Eldred in January 2009 after she was laid off. Mr. Aylor told Ms. Eldred paying medical insurance would cost him \$300 a month and he didn't want to pay that. Instead Ms. Eldred charged health insurance premiums to make sure the children had health care insurance.

Mr. Aylor did not pay for so much as a pair of shoes for their sons for two and a half years until Skagit County Court rightfully found him in contempt in November 2010 and fined him a portion of his back daycare, and ordered him to pay child support.

Knowing Mr. Aylor has a highly treatable mental illness, Ms. Eldred has been patient with the financial issues. Ms. Eldred gave her children's father a financial pass for two and a half years, picked up the tab for her former husband's rent shortfalls, carried his medical insurance for months after the divorce was final, took on all of the jointly incurred debt, all while starting a small business in a down economy and balancing motherhood. Ms. Eldred hoped Mr. Aylor would finally come to terms with his illness and seek treatment. Ms. Eldred's generosity towards the father of her children is unparalleled.

Despite her patience, Mr. Aylor has continued to bombard Ms. Eldred with legal cases focused primarily on finances. Mr. Aylor asked for and received a significant reduction of his unpaid back daycare and unpaid back rent [CP 113]. Skagit County Court rewarded Mr. Aylor's irresponsible behavior and penalized Ms. Eldred for her hard work and patience.

Mr. Aylor refuses to acknowledge his mental illness diagnosis or explore treatment options as suggested in on his 8/1/03 Psychiatric Intake Evaluation [CP 144] completed by SHIFA Psychiatric Center, his 2010 Forensic Psychiatric Evaluation. During his 2003 psychiatric evaluation, Mr. Aylor told the evaluator

he was a “*profit and clairvoyant*” [CP 139]. If that was a safe belief to tell the evaluator, one must wonder what other beliefs Mr. Aylor holds.

In 2010, Mr. Aylor underwent a second mental health evaluation, a Forensic Psychological Evaluation by Kenneth Muscatel, Ph.D., [CP 188 – 198] in which Muscatel noted Mr. Aylor to have “*denied having special powers beyond any other Norman human would have...*” [CP – 190-191]. Muscatel went onto state: “*Based on my limited time with him, my diagnostic assessment would more likely be a personality disorder....*” [CP – 196].

Mr. Aylor has two psychological evaluations with different findings, but both are concerning and cite serious mental health issues. Whether Mr. Aylor is bi-polar or has a personality disorder, something is off that affects his ability to make sound judgments, help provide for his children, hold a job or maintain a home of his own.

Either Mr. Aylor should be punished for being a deadbeat dad who refuses to work and be financially accountable for his children and his previous financial commitments. Or he must be required to address his mental illness through

treatment and medicine in order to be a productive member of society and help provide for his sons. Either way, Ms. Eldred must not be punished for her diligent efforts to provide for their children and honor jointly incurred debts.

Since Mr. Aylor adamantly denies his mental illness, he must be found finically liable. Therefore, Ms. Eldred asks the Court to please honor the original orders and to either adjust the financial responsibilities in her favor.

C. ASSIGNMENTS OF ERRORS

Mr. Aylor noted the following assignments of errors in his Brief of Appellant, referred to in this response brief as AB, with corresponding pages noted.

1. Mr. Aylor contends that Skagit County was erroneous in accepting Ms. Eldred's October 27, 2010 Motion for Contempt for the November 3, 2010 hearing [CP 91-110] [AB – 3]. The November 3, 2010 hearing was a continuation of a hearing that began on October 18, 2011. Ms. Eldred was instructed by Commissioner Paxton to file a motion for contempt prior to the

November 3, 2010 hearing. Therefore, the motion and the timing of filing are valid.

2. Mr. Aylor contends “*the trial court abused its discretion in the interpretation of Section 3.15 of the 2008 Final Parenting Plan on November 3, 2010*” [AB – 3]. Section 3 of the October 28, 2008 Final Parenting Plan has 14 subsections (Sections 3.1 through 3.14). There is no Section 3.15. Further, Mr. Aylor did not request Skagit County Clerks Office submit a copy of the Final Parenting Plan as part of this appeal. Therefore, this Assignment of Error is invalid.

3. RCW 26.19.080(3) daycare and proportion to basic child support. Mr. Aylor contends that the daycare should have been proportionate to his child support obligations [AB – 3]. While RCW supports this contention, Mr. Aylor was given special exceptions to his legal obligation to pay child support immediately upon the dissolution being final. Because of the complex agreement between debt and liability, Mr. Aylor agreed to a higher percentage of daycare to help offset the child support deferral. Therefore, this section of the Code does not apply in this situation.

4. Mr. Aylor contends “*The trial court erred in the enforcement of property distribution through contempt proceedings on November 3, 2010*” [AB – 3] and later cited *Decker v. Decker* [AB – 4]. Therefore, his assignment of error is invalid.

Decker v. Decker, 52 Wash. 2d 456, 326 P.2d 332 (1958), as summarized by Nymatlaw, “*involved a contempt decree to compel payment of community debts as per the divorce decree...*” and found that “*A trial court is not barred from using contempt powers and imprisonment to enforce compliance with a divorce dissolution decree.*” And concluded with “*As such contempt proceedings are a proper remedy to enforce a court’s order with respect to property settlements.*”

Mr. Aylor was found in contempt for unpaid daycare and unpaid rent, which is actually supported by the court ruling in *Decker v. Decker*.

D. STATEMENT OF THE CASE

Mr. Aylor has misled the Appellate Court by not including the following documents in the Skagit County Clerk’s Transmittal Request:

1. Ms. Eldred's December 2009 Petition for Modification of the Parenting Plan; [CP
2. Mr. Aylor's 2003 SHIFFA Psychological Evaluation [CP 138 – 153];
3. Mr. Aylor's 2010 Forensic Psychological Evaluation by Muscatel [CP 188 – 198];
4. Guardian Ad Litem report [CP 268 – 294]; and
5. Several other key declarations and responsive declarations.

Mr. Aylor has withheld the cornerstone documents of this legal matter. Just as taking a chapter out the middle of a book does not tell the full story, omitting these key documents has painted an inaccurate picture of this case. Therefore, on April 13, 2011 Ms. Eldred filed a Request with Skagit County to provide the above documents to the Appellate court to ensure the court has a full and accurate history of this case.

Ms. Eldred disagrees with the majority of the statements made by Mr. Aylor in his Brief of Appellant received by Ms. Eldred on March 19, 2011. For the sake of brevity this Statement of the Case will focus on a dozen or so of the key

inaccuracies Mr. Aylor provided. Each of Mr. Aylor's false statements is in italics below, and single-spaced as allowed.

False Statement #1

"Upon arriving, Ms. Eldred made small talk, poured two huge glasses of red wine, then brought in the divorce documents and said that she had made a few minor corrections that were nothing of concern. Then the two signed the documents." [AB – 5].

This is incorrect. Ms. Eldred (then Aylor) poured a small amount of red wine into a huge glass, which she shared with Mr. Aylor and apologized for not having more. Ms. Eldred and Mr. Aylor sat down together and went over the documents page by page. Mr. Aylor had Ms. Eldred make many modifications and reprint the pages several times before signing each document. Mr. Aylor was well aware of what he agreed to. Ms. Eldred and Mr. Aylor discussed child support, medical insurance, and day care. Mr. Aylor agreed that despite having no obligation for child support, he would pay half of the daycare and also agreed to pay whatever else he could during the two-year period when child support was formally deferred.

False Statement #2

"The counsel that represented the parties throughout most of the divorce proceedings proposed that no child support be paid for two years following the

divorce. This was due to the fact that Ms. Eldred's income was considerably higher than Mr. Aylor's and would have easily merited spousal maintenance almost equal to the amount of child support. As a result, both parties agreed to waive all child support until October 2010." [AB - 6].

This is a false statement. The parties retained counsel only during the 90-day waiting period of the divorce and were not represented throughout most of the divorce. Ms. Eldred drafted all documents required for the divorce.

Secondly, Ms. Eldred was advised by her attorney, Mr. David Yamashita who is a 30-year veteran attorney, that no judge in Skagit County would require Ms. Eldred to pay spousal maintenance for an able bodied male capable of earning an income, especially when Mr. Aylor had not been a stay at home father. In his August 13, 2008 letter [CP 20-21], which is attached to the final Order of Child Support [CP 9 – 18] Mr. Yamashita noted:

"As you may recall, my original advice concerning the financial issues was that you should not be required to pay any spousal maintenance because your husband had a job earning \$17 an hour and because you have primary residential care of the children (which I believe a judge or court commissioner would award you even if that were contested.)" [CP 20].

However, Ms. Eldred did not want to fight Mr. Aylor in court, so in order to stop a legal battle, Ms. Eldred agreed to defer child support for two years partially in lieu of fighting. Mr. Yamashita goes onto say:

“It is my legal opinion that Scott’s income and future earning capacity is such that a trial judge would order him to pay you at least \$150 a month per child for a total of \$300 per month and would not order you to give him any spousal support. For settlement purposes only, however I agree with you that it is not worth getting into a hotly contested lawsuit if the both of you are willing to compromise by agreeing to a settlement where no money is exchanged for child support for spousal maintenance.” [CP 21].

False Statement #3

“During that time Ms. Eldred never once acted as if any payment were due, nor did she try any means to collect daycare.” [AB 7].

This is a false statement. Ms. Eldred tried repeatedly to collect funds from Mr. Aylor for daycare, medical expenses, shoes, etc. Mr. Aylor initially paid \$100 (\$50 for our oldest son’s birthday party, and \$50 toward his Costco membership), but then stopped paying anything toward the children.

False Statement #4

“In September of 2010, Mr. Aylor filed with the Skagit County Superior Court to modify the child support plan due to being unemployed and having significantly less income than when the decree was finalized.” [AB 7].

This statement is false. In a phone conversation in September 2010, Ms. Eldred reminded Mr. Aylor that his first child support payment was coming due in a few weeks and that she was budgeting for the agreed upon \$650 per month. Mr. Aylor responded that he was not going to pay child support that he was going to

go to school full time at the University of Washington on student loans and grants. He was voluntarily unemployed.

False Statement #5

“Mr. Aylor began paying child support to DCS on the 20th of October, 2010.”

This is a false statement. The Washington State Department of Child Services began collecting child support payments through garnishment. Mr. Aylor has not paid child support voluntarily.

False Statement #6

“Ms. Eldred submitted income information from 2008 (CP 46). At the request of the court, Eldred then only submitted information for 2009...” [AB – 8].

This is a false statement. Ms. Eldred submitted her 2009 tax return together with her 2008 tax return on October 18, 2010 and provided Mr. Aylor with a copy at their October 18, 2010 hearing.

False Statement #7

“Ms. Eldred also said her income was significantly less for 2009, but then showed up to a meeting several days later in brand new \$50,000 SUV.” [AB – 8].

Mr. Aylor insinuates that Ms. Eldred was not truthful. This is inaccurate. Ms. Eldred reported an adjusted gross income of \$60,017 in 2009 compared to an adjusted gross income of \$86,352 in 2008, a 30% reduction in income. Again in 2010, Ms. Eldred reported an adjusted gross income of \$46,370, a 46% reduction in her income from 2008.

Additionally, Ms. Eldred did purchase a 2007 SUV on October 29, 2010, but it was neither brand-new nor \$50,000 as stated by Mr. Aylor.

False Statement #8

“Commissioner Paxton went on to adjust the support schedule more favorably for Mr. Aylor – due to his situation of financial difficulty and lower income [RP 11]. Commissioner Paxton also simultaneously took the opportunity to lambaste and belittle Mr. Aylor for his financial situation [RP 29-39] – yet ironically Mr. Aylor’s financial situation is due directly to the 2008 divorce and subsequent unfounded litigation – all of which has been adjudicated by Commissioner Paxton.” [AB 9-10].

This is a false statement. From 2008 to 2009 Mr. Aylor was enrolled in an on-line college program pursuing a Bachelor of Science in project management. In November 2009, during an “enlightened” period Mr. Aylor purportedly heard God’s voice to tell him to drop out of college to become a world famous rock star [CP 222]. Mr. Aylor shared this with many people, including his sister and

brother-in-law [CP 234], and our children in front of Leah Kincaid [CP 228], and later within earshot of my husband, Marcus Eldred [CP 258], both of who have filed signed declarations testifying to this. Scott's financial difficulties are the direct result of his own poor choices, and not the result of the 2008 divorce.

False Statement #9

"Ms. Eldred would like to pretend that this situation was part of a rental agreement however the reality is that both parties names were on the mortgage, and both parties were responsible for it." [AB 10].

This is a false statement. Mr. Aylor rented the property at 300 N. 30th Street, Mount Vernon [CP 231], from Ms. Eldred, who is listed as first position in the mortgage. Mr. Aylor wrote his rent checks to Temple Properties and provided rental agreements for his tenants. Key statements from the Final Divorce Decree [CP 3] are as follows:

"3.2.1 The Respondent, Scott Aylor, will pay the Petitioner \$2,012 per month for the mortgage (the total cost of the mortgage, tax, and insurance) on the first of every month."

3.2.3 The Respondent (Mr. Aylor) will send the rent, Payable to Temple Properties, directly to the Petitioner (Ms. Eldred) no later than the 1st of every month.

3.2.5 The Petitioner (Ms. Eldred) shall pay the mortgage on 30th since she is the prime borrower on both the 1st and 2nd mortgages."

Clearly, Mr. Aylor rented the house at 300 N. 30th from Ms. Eldred.

False Statement #10

“By giving the 30th street property back to Ms. Eldred, Mr. Aylor also gave her \$10,000 in equity.”

This is a false statement. The current assessed value of the property is \$242,900 based on Skagit County Assessors’ 2011 valuation. The average sale price of comparable property for the last six months is \$204,632 based on recent information provided to Ms. Eldred by Racquel McDermott, agent with Remax. The debt on the property is approximately \$289,000. Assuming Ms. Eldred could get approximately \$260,000 for the house, less 10% for realtors, excise tax, and other fees, Ms. Eldred would net about \$234,000. Mr. Aylor actually gave Ms. Eldred a debt of approximately \$55,000 when Mr. Aylor quit claimed the property to Ms. Eldred.

E. ARGUMENT

Argument #1: November 3, 2010 Findings Not Final

Commission Paxton marked “temporary” on the November 3, 2010 Order of Child Support [CP 120] and set a future hearing date of May 9, 2011. At the May 9, 2011 Commissioner Paxton continued the hearing again until July 18, 2011. Therefore, the findings he noted therein are not final and cannot be challenged in the Appellate Court.

Argument #2. Contempt Motion by Ms. Eldred against Mr. Aylor Was Valid

Mr. Aylor first raised his concern on September 16, 2010 when he filed a Motion and Declaration for Adjustment of Child Support along with his source financial documents.

On October 4, 2010 Ms. Eldred filed a Petitioner's Counter Motion for Child Support [CP 47 – 48]. On October 18th, Ms. Eldred filed her Sealed Financial Documents for 2008 and 2009 (tax returns).

At the October 18th, 2010 hearing, both parties waited nearly three hours until Commissioner Paxton called the matter to be heard. Commissioner Paxton briefly questioned the nature of the hearing, clarifying that both parties had filed motions to modify the child support payments. Commissioner Paxton asked Ms. Eldred if she had filed a motion for contempt, and suggested she do so. Realizing the depth of the matter to be heard, the Honorable Paxton apologized then continued the hearing to a special set hearing on November 3, 2010.

Ms. Eldred filed a motion for contempt on 10/27/2010 [CP 91 – 110], prior to a continued hearing set for November 3, 2010.

Because the hearing was originally set for October 18, 2010, Mr. Aylor was provided with appropriate legal notice for the November 3, 2010 hearing, and Mr. Aylor clearly heard Commissioner Paxton instruct Ms. Eldred to file a contempt motion and continue the hearing to November 3, 2010, it was indeed a valid hearing and the actions taken at the November 3, 2010 hearing, including approving a the motion filed October 27, 2010, were valid.

Argument #3: Mr. Aylor Did Not Meet State Criteria for Spousal Maintenance

In Washington State, spousal maintenance may be awarded where there is need on the part of one spouse and ability to pay by the other. The duration and amount depend upon the facts and circumstances of each case.

In determining the need for maintenance, and the appropriate duration and amount, the court will consider:

- financial resources of each party;

- work experience and earning prospects of each spouse, including consideration for the time required for one spouse to obtain training for becoming employed or self-supporting;
- age and physical and emotional conditions of each party;
- the duration of the marriage;
- the standard of living established during the marriage.

Mr. Aylor was a 40-year-old able-bodied male at the time of the divorce, capable of earning an income. He had not been stay at home father, and in fact took the children to daycare during periods of unemployment. He was in the work force at the time of the divorce and capable of being self-supportive, therefore did not meet the criteria for spousal support. Mr. Aylor would not have been awarded spousal support.

Argument #4: Ms. Eldred Did Not Agree to Pay Spousal Maintenance

On Page 5 of the Final Order of Child Support [CP 13] the document (drafted by Ms. Eldred) states:

“The Respondent (Mr. Aylor) seeks spousal maintenance. In lieu of contesting his request, the Petitioner (Ms. Eldred) has agreed to waive child support payments for a period of two years.”

Ms. Eldred chose not to contest Mr. Aylor's request for spousal maintenance. Ms. Aylor never agreed to pay spousal support.

Argument #5: Final Settlement Was a Complex Package of Debts and Liabilities

In the Final Decree of Dissolution [CP 1 – 8], Mr. Aylor agreed to pay Ms. Eldred as follows from October 2008 through September 30, 2010:

\$2,012 for rent for 30th Street
\$306 (approximately) for 50% of the day care
Total: \$2,318 per month

Mr. Aylor further agreed that beginning on October 1, 2010 he would pay Ms. Eldred:

\$2,012 for rent for 30th Street
\$306 (approximately) for 50% of the day care
\$650 for Child Support
Total: \$2,968 per month

Instead, Mr. Aylor currently pays Ms. Eldred about \$400 per month, about \$2,500 less than he agreed to and was ordered to on our final dissolution papers.

Ms. Eldred agreed to the deferred child support payment for five reasons. 1) Hoping Mr. Aylor would finally address his mental illness and finish his four-year degree knowing lots of people are bi-polar and live productive lives. 2) Because Mr. Aylor agreed to take the financial and physical responsibility of their four-bedroom house in Mount Vernon. 3) Because Mr. Aylor agreed to pay for half of the children's day care, and part of their medical insurance if needed from the time the dissolution was final. 4) To avoid a court battle with Mr. Aylor. 5) In exchange for a slightly higher monthly child support payment, about \$200 more per month.

Ms. Eldred would not have agreed to defer child support had Mr. Aylor not agreed to be responsible for their 30th Street house, pay half of daycare from the date of dissolution, pay some towards medical, and pay a higher rate of child support per month in the long term.

Beginning 10/1/2010 Mr. Aylor was to pay Ms. Eldred an additional \$650 a month for child support. This amount differed slightly from the standard Child Support Schedule as Mr. Aylor agreed to pay slightly more in exchange for Ms. Eldred's deferral of child support for two years.

In January 2010, Mr. Aylor abandoned the house at 300 N. 30th Street and stopped paying Ms. Eldred rent as he was ordered in the amount of \$2,012. The 30th Street house now rents for \$1,500, \$512 less than Mr. Aylor was ordered to pay. That is another \$512 bill Ms. Eldred pays each month instead of Mr. Aylor, in addition to the maintenance, upkeep, and rental responsibilities.

Looking at just child support obligations is out of context, as the final settlement between Mr. Aylor and Ms. Eldred was a complex financial settlement agreement, a balance between income and debts.

Argument #6: Mr. Aylor Failed to Challenge Final Dissolution Papers

Mr. Aylor signed final dissolution papers on October 8, 2008. Ms. Eldred provided Mr. Aylor with copies of all the signed final papers. The final

dissolution hearing was on October 27, 2008. Mr. Aylor had 19 days to review the dissolution papers. If Mr. Aylor had any concerns, he had ample time to review the documents he signed and could have raised any concerns at the final dissolution hearing. However, Mr. Aylor did not object to any of the terms in the final dissolution papers and chose not to attend the final dissolution hearing.

Argument #7: Mr. Aylor is Partially Liable the Jointly Incurred Debts

In addition to taking on two mortgage liabilities of the 30th Street house from Mr. Aylor, Ms. Eldred pays the other four mortgages jointly incurred by Mr. Aylor [CP 343]. She also paid off the Home Depot Line of Credit. Of the Community Liabilities listed in Section 2.10 of the final Findings of Fact and Conclusions of Law dated October 27, 2008, Ms. Eldred took responsibility for all of the jointly incurred debts despite Mr. Aylor being assigned some of that jointly incurred debt. Ms. Eldred did so to protect her credit, knowing Mr. Aylor would likely default on some if not all of his financial obligations. In July 2010, Mr. Aylor filed for bankruptcy and walked away from all of his financial liabilities. Mr. Aylor should be held liable for some of the joint debt.

Argument #8: Mr. Aylor Was Required to Pay Ms. Eldred Monthly Rent for 300 N. 30th Street House

The Final Dissolution Papers [CP – 2-3] ordered Mr. Aylor to pay Ms. Eldred \$2,012 a month to “rent” one of the three houses they purchased together while married. Mr. Aylor agreed to and was ordered to pay Ms. Eldred \$2,012 per month in rent for 300 N. 30th Street.

Argument #9: Mr. Aylor Owes Ms. Eldred a total of \$9,613.80 for Lost Rental Income 300 N. 30th

In 2009 Mr. Aylor shorted Ms. Eldred more than \$3,400 in his monthly rent payments [CP 112]. Ms. Eldred continued to pay Mr. Aylor’s rental shortfalls to ensure their sons had a safe place to stay when they visited their father.

In January 2010 Mr. Aylor locked the house at 300 N. 30th Street and left it filthy and damaged and stopped paying Ms. Eldred rent as ordered to in the Final Dissolution “*in direct retaliation*”, Mr. Aylor said, for filing a request to modify the parenting plan. Ms. Eldred filed a proposed parenting plan modification after Mr. Aylor’s family members shared their concerns with Ms. Eldred about Mr.

Aylor's inability to make sound decisions that would likely affect his ability to parent young children.

Exhibit 8 [CP 112] shows a breakdown rental payment history and an arrears calculator for Mr. Aylor. Mr. Aylor owes Ms. Eldred \$9,614 for rent he shorted Ms. Eldred from January 2009 through November 2010. Additionally, Mr. Aylor owes Ms. Eldred the difference between what he agreed to pay (\$2,012 a month) and the amount she can rent the house for (\$1,500), from November 2010 through April 2011 (\$512 x 6 months), which equates \$3,072. The total Mr. Aylor owes Ms. Eldred in shorted rent (\$9,614 plus \$3,072) is \$12,686. Commissioner Paxton awarded Ms. Eldred only \$2,280 in unpaid rent [CP 113]. Commissioner Paxton shorted Ms. Eldred \$10,406 in lost rent from Mr. Aylor. Additionally, Mr. Aylor owes Ms. Eldred \$512 per month on an ongoing basis, the difference between the mortgage and the rental amount, until the house can be sold or rent increased to \$2,012.

Argument #10: Day Care Expenses Were Rightfully Excluded From Child Support Transfer Payment

Washington State law excludes daycare from basic child support transfer payments as stated in RCW 26.19.080, which states:

“RCW 26.19.080 Allocation of child support obligation between parents —

Court-ordered day care or special child rearing expenses:

(1) The basic child support obligation derived from the economic table shall be allocated between the parents based on each parent's share of the combined monthly net income. □ □

(2) Health care costs are not included in the economic table. Monthly health care costs shall be shared by the parents in the same proportion as the basic child support obligation. Health care costs shall include, but not be limited to, medical, dental, orthodontia, vision, chiropractic, mental health treatment, prescription medications, and other similar costs for care and treatment. □ □

(3) Day care and special child rearing expenses, such as tuition and long-distance transportation costs to and from the parents for visitation purposes, are not included in the economic table...” Emphasis added.

Therefore, daycare expenses were never intended to be included within the transfer payment for child support and were rightfully in addition to child support.

Argument #11: Mr. Aylor’s Income Should Have Been Imputed

Ms. Eldred imputed Mr. Aylor’s income using his 2008 adjusted gross income per his submitted tax returns as allowed for in RCW 26.19.071 for the 2010 Washington State Child Support Schedule Worksheets. Mr. Aylor has been voluntarily under or unemployed for two and a half years. Using his unemployment earnings instead of what Mr. Aylor is capable of earning, as

Commissioner Paxton did, only rewarded Mr. Aylor for not working and penalized Ms. Eldred for her hard work. Mr. Aylor's income should have been imputed as allowed for by state law.

Argument #12: Ms. Eldred's Income Should Take Into Account Her Commitment to Pay All Jointly Incurred Debt

In the November 3, 2010 hearing, Ms. Eldred asked Commissioner Paxton to consider adjusted gross income, arguing that she pays out thousands in six mortgages each month. All of the mortgages, six in all, list Mrs. Aylor (now Ms. Eldred) as the primary borrower, with Mr. Aylor as the secondary borrower. Ms. Eldred has worked long hours to honor the jointly incurred debt.

Since Mr. Aylor quit claimed the house at 300 N. 30th Street (awarded to him in the Dissolution [CP 2]) to Ms. Eldred, Ms. Eldred now has two rentals. Both rentals have negative cash flows and actually cost Ms. Eldred nearly \$1,000 each month, more when the renters fail to pay. Besides a financial obligation, Ms. Eldred faces the stress associated with renting two houses in a down economy, plus property maintenance and upkeep.

Commission Paxton counted Ms. Eldred's increased earnings against her in determining Ms. Eldred's responsibility of child care expenses, earnings required to service six mortgages. Commissioner Paxton increased her financial liability for the children and failed to consider her increased earnings were required to service Mr. Aylor's debt, the debt he filed bankruptcy to avoid working and paying for his debts.

Argument #13: Child Support Obligation and Percentage Should Be Increased for Mr. Aylor

Mr. Aylor filed a motion to reduce his child support obligation in September 2010 [CP 38 – 40]. Mr. Aylor has remained voluntarily unemployed for years, and successfully petitioned the court to use his unemployment earnings in calculating his income. Even in this current economy the most challenged person can find gainful employment within two years if they are inclined to work. Mr. Aylor is not inclined to work, and the court rewarded him for his financial irresponsibility and reduced his child support payments from \$650 a month to \$370 a month, for two children, in November 2010.

Until he was found in Contempt of Court and ordered to do so, Mr. Aylor paid Ms. Eldred \$100 towards their sons (well, \$50 since the other \$50 went for Mr. Aylor's half of the Costco Membership) since they separated three years ago. Ms. Eldred struggled as a single mother to keep the six mortgages paid each month (first and second mortgages on her house, the house Mr. Aylor was awarded, and one rental). Still, Ms. Eldred did not seek relieve and file for review in Skagit County Court. Mr. Aylor appealed the financial situation and came out of the 11/3/2010 hearing quite well. Still, Mr. Aylor seeks to have his commitment further reduced in this appeal.

Mr. Aylor has had years to address his mental illness, finish his degree and to go to work. In November of 2009, just months before he completed his online degree, Mr. Aylor dropped out his program mid semester upon hearing God's voice to quit school and become a rock star as documented in Ms. Eldred's December 2009 Parenting Plan Modification Request and supporting documents ([CP 234], [CP 222], [CP 228], and [CP 258]). Mr. Aylor believes that was a wise decision and refuses to acknowledge his mental illness or work, yet abuses the system by drawing unemployment, running up his charge accounts, and filing for bankruptcy. Having a highly treatable mental illness is not an excuse to not honor his original child support orders and his duty and legal responsibility to help Ms.

Eldred provide for his children. There are lots of people in the world who suffer from mental illness yet choose to provide for their children.

The 2008 Child Support Worksheet noted Ms. Eldred's proportion of childcare at 72% and Mr. Aylor's at 28% based on their 2007 and 2008 earnings. In 2010, Ms. Eldred submitted a revised 2010 Child Support Schedule Worksheet, and her 2008 and 2009 tax returns with a very different income situation for her. In 2009 Ms. Eldred's adjusted gross income dropped to \$60,017 from \$86,352 in 2008, a 30% reduction in income. Using the revised income to calculating the 2010 Child Support Schedule Worksheet, Ms. Eldred imputed Mr. Aylor's income using his 2008 adjusted gross income per his submitted tax returns as allowed for in RCW 26.19.071 as Mr. Aylor has been voluntarily under or unemployed for two years. With the revised income amounts noted, Ms. Eldred's proportion of the children's expenses dropped to 62% and the Respondent's increased to 38% on her 2010 Child Support Worksheet. Based on Ms. Eldred's 2010 return, Mr. Aylor's percentage responsibility should increase to 45%, a very reasonable amount, rather than decrease to 21%.

Argument #14: Ms. Eldred should be awarded the Remaining Back Day Care Expenses

Mr. Aylor failed to pay Ms. Eldred any of his half of the children's day care expenses from October 2008 on as ordered to in the Final Order of Child Support. Mr. Aylor's half of day care totaled \$7,083.28. (\$6,793.28 for October 2008 through September 2010, plus \$290 for October 2010). Commissioner Paxton awarded Ms. Eldred \$3,804 [CP 113], shorting Ms. Eldred \$3,279.28 in back day care expenses. Ms. Eldred should be awarded the remaining \$3,279.28 in back day care expenses.

Argument #15: Ms. Aylor should be Required to Pay Ms. Eldred the Negative Equity of their 300 N. 30th Street House

As described above under False Statement #10, the property at 300 N. 30th Street has a negative value of \$55,000. Mr. Aylor was awarded this property in the dissolution. Therefore, Mr. Aylor is liable for that debt and owes Ms. Eldred \$55,000 for the negative equity.

Argument #16: Ms. Eldred Should Be Awarded Costs Associated with this Appeal

Mr. Aylor remains voluntarily unemployed, living in his father's house. As direct retaliation for Ms. Eldred's petition to modify the parenting plan, Mr. Aylor has filed four separate court actions against Ms. Eldred (Modification of Child Support in Skagit County Superior Court, Discretionary Review at the Washington Court of Appeals District 1, and this Appeal again in the Court of Appeals District 1, and a discretionary review request with the Washington State Supreme Court).

Mr. Aylor refused mediation through Skagit Mediation [CP 313]. Instead, Mr. Aylor continues filing frivolous court motions and requests, and sending streams of disturbing e-mails and certified packages to Ms. Eldred. Ms. Eldred is working two full-time jobs: providing for her children and maintaining their home, while running a small consulting business in a down economy. Mr. Aylor's motions and court actions waste the court's time and Ms. Eldred's time, time Ms. Eldred could be with her children or working for a paying client. Ms. Eldred seeks relief from the Mr. Aylor's tactics and asks the Court to award her \$12,500, 100 hours of her time her current billing rate of \$125 an hour to respond to this appeal.

**Argument #17 Mr. Aylor Should Be Ordered to Address His Mental Illness
and Not Be Allowed to Continue Filing Frivolous Legal Appeals**

Mr. Aylor has voluntarily remained unemployed or underemployed (although as of May 9, 2011 he took a 100% commission job selling used cars in Spokane), living in his father's house, filing numerous motions and appeals against Ms. Eldred. He has nothing but time.

Mr. Aylor has two disturbing psychological evaluations. The first diagnosed him as being a mid-level bipolar, and the second suggested a personality disorder. Mr. Aylor believes he is a profit and clairvoyant, and stated so during his 2003 evaluation [CP 139]. Mr. Aylor's defensive forensic psychological evaluation in 2010 found him to be "*not flawless*" [CP 196] and suggested a personality disorder [CP 197]. The Sealed Guardian Ad Litem Report concurs that these are serious mental health allegations, and recommended supervised visits continue [CP 293]. Mr. Aylor's paranoid belief that Ms. Eldred has an inappropriate relationship with Commissioner Paxton [CP 314] and that the Skagit County Court System is against him [CP 30] is further evidence of his mental illness.

While it is clear that Mr. Aylor suffers from some kind of mental illness, the exact diagnosis and treatment is not yet clear as Mr. Aylor has refused to seek meaningful psychiatric care despite being urged to repeatedly. Ms. Eldred and her husband Mr. Eldred proposed Mr. Aylor enter into a meaningful relationship with a psychiatrist [CP 315], and [CP 320-321] to figure out this mess and allow Mr. Aylor to see his children more. Instead, Mr. Aylor refuses to work towards a solution [CP 314-315].

In closing, either Mr. Aylor really is a deadbeat dad who refuses to pay his proportionate share of child expenses, or he really suffers from a mental illness that makes being financially responsible problematic, though not impossible. Ms. Eldred believes Mr. Aylor suffers from mental illness as he has been diagnosed, and requests the Court of Appeals to help Mr. Aylor by ordering him into treatment for the sake of the children.

F. CONCLUSION

Ms. Eldred respectfully asks the Court of Appeals to:

1. Uphold Skagit County Superior Court's Contempt Finding against Mr. Aylor.

2. Honor the Original Child Support Order, and require Mr. Aylor to pay 50% of the daycare expenses between October 2008 and October 2010, awarding Ms. Eldred the remaining \$5,215 of his share of daycare.
3. Award Ms. Eldred the remaining \$10,406 for rental shortages at 300 N. 30th Street from 9/2009 through 4/2011.
4. Order Mr. Aylor to pay Ms. Eldred the difference between what 300 N. 30th will rent for and what Mr. Aylor agreed to pay until the time the house is sold, or the rent equals or exceeds \$2,012.
5. Award Ms. Eldred \$55,000 from Mr. Aylor for the \$55,000 for the debt he saddled her with when he quit claimed the 300 N. 30th Street
6. Use Mr. Aylor's imputed income and Ms. Eldred 2009 income and adjust the parental child support obligation to 45% for Mr. Aylor, and 55% for Ms. Eldred of the \$1,764 child support obligation.
7. Increase Mr. Aylor's percentage of child support and daycare expense to 45%, retroactive to 11/3/2010. This equates an increase of \$423.80 per month, multiplied by nine months (November through July 2011, \$3,814.20) at which time this matter will be heard in the Appellate Court.
8. Award Ms. Eldred costs associated with responding to this appeal, 100 hours at my current billing rate of \$125 an hour, for an award of \$12,500.

CERTIFICATE OF MAILING: I certify that I mailed a copy of this documents
to the parties listed, postage prepaid on the 11th day of May, 2011.

Signature: 