

66835-8

66835-8

No. 66835-8-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

In re the Marriage of

JEFFREY ELDON KENDALL
Appellant

and

CAROLYN CHRISTINE KENDALL
Respondent

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ON REVIEW FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. RESTATEMENT OF ISSUES..... 1

III. MOTION FOR ATTORNEY FEES..... 3

IV. STATEMENT OF THE CASE 3

A. THE PARTIES HAVE TWO CHILDREN WHO RESIDE PRIMARILY WITH THE MOTHER, WHILE THE FATHER'S TIME IS RESTRICTED UNDER RCW 26.09.191. 3

B. THE MOTHER SOUGHT TO MODIFY THE ORIGINAL PARENTING PLAN AND INCLUDED A REQUEST TO MODIFY CHILD SUPPORT.... 4

C. AFTER A TRIAL AND REVIEW OF SUBSTANTIAL EVIDENCE, THE TRIAL COURT MODIFIED CHILD SUPPORT. 6

V. ARGUMENT IN RESPONSE TO FATHER'S APPEAL..... 11

A. THE TRIAL COURT CORRECTLY APPLIED THE STATUTORY CHILD SUPPORT TABLES IN EFFECT AT THE TIME OF TRIAL AND DID NOT ABUSE ITS DISCRETION WHEN IT MADE THE NEW CHILD SUPPORT PAYMENT RETROACTIVE TO THE DATE THE PETITION TO MODIFY WAS FILED. 11

B. THE MODIFICATION IS AUTHORIZED BY THE PARTIES' AGREEMENT. 14

C. THE MODIFICATION IS ALSO AUTHORIZED BY THE CHANGE IN THE TABLES. 14

D. THE MODIFICATION IS ALSO AUTHORIZED BY THE CHANGE IN THE PARENT'S INCOME. 16

E. THE TRIAL COURT'S FINDING RE: INCOME IS SUPPORTED BY SUBSTANTIAL EVIDENCE 16

F. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT ORDERED THE FATHER TO CONTRIBUTE TO THE COST OF THE CHILDREN'S EXTRACURRICULAR ACTIVITIES. 19

VI. MOTION FOR ATTORNEY FEES.....21

VII. CONCLUSION.....23

TABLE OF AUTHORITIES

Washington Cases

Fleckenstein v. Fleckenstein, 59 Wn.2d 131, 366 P.2d 688 (1961);
.....21

In re Marriage of Crosetto, 82 Wn. App. 545, 918 P.2d 954 (1996)
.....22

In re Marriage of Ayyad, 110 Wn. App. 462, 38 P.3d 1033 (2002) 18

In re Marriage of Blickenstaff, 71 Wn. App. 489, 859 P.2d 646
(1993)..... 18

In re Marriage of Griffin, 114 Wn.2d 772, 791 P.2d 519 (1990).....21

In re Marriage of Holmes, 128 Wn. App. 727, 117 P.3d 370 (2005)
..... 13

In re Marriage of Morrow, 5 Wn. App. 579, 770 P.2d 197 (1989).22

In re Marriage of Rideout, 150 Wn.2d 337, 77 P.3d 1174 (2003).. 15

Schumacher v. Watson, 100 Wn. App. 208, 997 P.2d 399 (2000) 22

State v. Brewster, 152 Wn. App. 856, 218 P.3d 249 (2009)..... 13

Teitzel v. Teitzel, 71 Wn.2d 715, 430 P.2d 594 (1967)..... 14

Thompson v. Hanson, 142 Wn. App. 53, 60, 174 P.3d 120 (2007)16

Wenatchee Sportsmen Ass'n v. Chelan County, 141 Wn.2d 169, 4
P.3d 123 (2000)..... 16

Statutes, Rules & Other Authorities

RAP 18.1..... 23

RAP 2.5(a) 14

RCW 26.09.140 23

RCW 26.09.170 15

RCW 26.19.001 13, 15

RCW 26.19.020 11, 12

RCW 26.19.080 19

I. INTRODUCTION

The father appeals from an order modifying child support following modification of a parenting plan, which was entered by agreement. Both parties asked the court to modify child support if the parenting plan was modified. Despite the father's failure to disclose all his financial information, as required, and despite evidence that he has substantially greater income and wealth, the court calculated child support using the same income for the father as he conceded five years ago. His child support obligation increased primarily because the legislature extended the economic tables for higher income families. This appeal is further evidence of the father's intransigent conduct, on display in the trial court. Accordingly, the mother should be awarded fees.

II. RESTATEMENT OF ISSUES

1. Was the trial court correct to apply the law in effect at the time of trial (i.e., the economic tables) to arrive at the amount of child support?
2. Did the trial court act within its discretion to make the order of child support retroactive to the date the mother filed her petition for modification?

3. Was the trial court's authority to modify child support invoked by both parties' request to modify, such that the father cannot now be heard to complain that the court granted his request to modify child support?

4. Was the trial court authorized to modify child support because the parents' income had changed where the statute authorizes modification on this basis and it is undisputed the mother's income had changed?

5. Is the trial court's finding that the father's gross monthly income equaled at least \$7500 supported by substantial evidence?

6. Was the trial court authorized to modify child support because the economic tables have changed and is this Court authorized to affirm the trial court on this basis even if the trial court did not rely on it?

7. Did the trial court abuse its discretion when it ordered the father to contribute his proportional share to extracurricular activities, the cost of which was proven to be at least \$300 monthly?

8. Did the trial court act within its discretion when, in order to limit contact between the parties, given the history of

domestic violence, it relieved the mother of the requirement to invoice the father for the costs of the activities, particularly where the parenting plan grants the mother the authority to incur these expenses?

III. MOTION FOR ATTORNEY FEES

The mother respectfully moves the court for an award of attorney fees for the reasons stated below at § V.I.

IV. STATEMENT OF THE CASE

A. THE PARTIES HAVE TWO CHILDREN WHO RESIDE PRIMARILY WITH THE MOTHER, WHILE THE FATHER'S TIME IS RESTRICTED UNDER RCW 26.09.191.

Carolyn and Jeffrey married in 2000 and separated in 2005. CP 745. They have two children from the marriage, currently aged 8 and 10 years. CP 727. The children reside primarily with the mother, pursuant to an agreed parenting plan entered in 2006 and modified slightly in 2007. CP 749-764, 765-779. This plan restricted the father's residential time because of a "history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm." CP 766. The plan also conferred sole decision-making on the mother, but permitted dispute resolution by private arbitration. CP 772-775.

B. THE MOTHER SOUGHT TO MODIFY THE ORIGINAL PARENTING PLAN AND INCLUDED A REQUEST TO MODIFY CHILD SUPPORT.

On July 14, 2009, the mother petitioned for an order of protection. CP 780-803. Shortly thereafter, she petitioned to modify the parenting plan. CP 1-7. Her petition included a request to modify child support if the parenting plan was modified. CP 2 (¶ 2.3).

As a basis for modifying the parenting plan, the mother pled detriment to the children when they are in the father's care. CP 4 (¶ 2.9). For example, despite a prohibition in the parenting plan against physical punishment, the children complained the father had pulled their hair, kicked them, slapped them, and frequently yelled at them. *Id.*

The father counter-petitioned for modification of the parenting plan. CP 804-809. He also asked the court to modify child support if the parenting plan was modified. CP 808 (¶ III).

After extensive litigating on the protection order petition and after a "special setting" hearing, the court entered a protection order against the father. CP 810-813. Shortly thereafter, the court granted adequate cause on the mother's petition to modify and denied adequate cause on the father's cross-petition to modify the

custodial arrangement, but granted adequate cause to change provisions of the parenting plan. CP 814-815.

Nearly a year later, on October 27, 2010, after more litigation and the production of a report by a parenting evaluator, the parties again agreed to a parenting plan. CP 727-743. As before, and for the same reason as before, the father's residential time is restricted. CP 728. Moreover, the parenting plan's residential schedule was suspended until the father completed a period of reconciliation counseling and individual therapy, during which time he was allowed only professionally supervised time with the children. CP 732-733. Again decision-making was conferred on the mother solely; a former requirement that she consider the father's "input" was omitted. CP 736. Moreover, the provision allowing for dispute resolution by private arbitration was changed so that the parties were required to resolve disputes by "court action" only. CP 737.

By agreed order, the child support issue was transferred to the trial by affidavit calendar. CP 953-954.

C. AFTER A TRIAL AND REVIEW OF SUBSTANTIAL EVIDENCE, THE TRIAL COURT MODIFIED CHILD SUPPORT.

Because of the restrictions on the father's residential time, the children essentially live full-time with the mother, who is employed as a buyer for Costco. CP 17, 31. She has a gross monthly income of \$9624, which is \$1958 more than at the time of the last child support order (i.e., her income increased from \$7666). CP 710, 722.

The father is self-employed in the real estate business (or, according to his statements to the IRS, as a securities trader). CP 533. He owns an 82% share of a family-owned real estate company, Steel Icon, LLC, where he has worked since 1988. CP 11-12, 72. During the course of the child support litigation, the father failed to disclose fully his income and assets, forcing the mother repeatedly to move to compel production, which still was not completely successful. CP 30-31, 54, 78-79, 816-894.¹ The father was represented by five attorneys and appeared pro se at times, which created confusion and delay. CP 32-33, 75. His

¹ In ordering the father to comply with discovery the first time, the court found he provided some answers, but only after the mother moved to compel. CP 55. Twice, the court ordered the father to provide complete answers and to pay the mother \$1500 in fees.

financial declarations were inconsistent. CP 57-69. For example, his net income on August 30, 2010 was \$3559 and a month later was \$2044. CP 57, 64. In August, he claimed to have spent approximately \$85,000 in attorney fees; a month later, he claimed to have spent over a million. CP 61, 69.

His claims of low income in his declarations were inconsistent with the evidence. For example, the father's bank statements from his personal account from 2009-2010 showed average monthly deposits of \$25,000. CP 667-690.² The father owns a \$1.7 million waterfront home, with a \$1 million equity interest; he enjoys club memberships, owns two vehicles, including a new vehicle just purchased, and donates substantially to charity. CP 34, 74, 151. He is ahead on his mortgage payment and admitted paying \$2000 extra against the principal, arguing "the benefit of paying down a mortgage." CP 74, 310. He failed to disclose the sale of one of the properties belonging to his company, which appeared to result in a profit to him of over a million dollars. CP 72. He justified his failure to disclose this transaction by arguing that it was not a sale of his personal property. RP

² These deposits were made as "Internet Banking Transfers" from four different accounts. CP 668-690.

(01/14/11) 21.³ In a further attempt to explain away this transaction to the court, the father claimed the proceeds were “utilized in a tax deferred exchange,” rendering them “not available” to the father in the form of cash. CP 294.

In general, the father engages in extensive tax strategies, which means his tax returns do not illuminate his income. CP 72-73. He has a history of keeping large sums of cash in a safe, cash generated, for example, by pay-per-use laundry machines in his rental buildings. CP 73. Yet, he disclosed no cash on hand and did not provide complete disclosure as to financial accounts, making it appear that he is “cash poor.” CP 149-159. And though he failed to disclose information regarding his company, it appears the company owns millions of dollars worth of real estate. CP 76, 150-151. His interest in this real estate is at least \$2.5 million. CP 165.

At the trial by affidavit, the commissioner found the modification justified by a change in “the parents’ income” and by virtue of the fact that child support “was pled as an issue in the parenting plan modification.” CP 362; see, also CP 359 (“The

³ The mother’s interrogatories asked if he “(alone or with others)” sold any property. CP 104.

matter was transferred to the trial by affidavit calendar after a parenting plan was agreed to in a parenting plan modification.”). The commissioner further found the father’s income to be \$7500, after finding the father’s financial declaration “not credible.” RP (01/14/11) 36-37. Lacking full and forthright disclosure from the father, the court inferred his income based on the historical data (his agreement to this figure in 2006) and the fact that he meets his high monthly expenses, including prepayment of his mortgage, without incurring debt. RP (01/14/11) 37-38.

The commissioner also ordered payment of extraordinary expenses. CP 702-703. The mother had requested the father be required to contribute \$300 monthly to the children’s extraordinary expenses, to help cover the cost of activities such as baseball, basketball, skiing, karate, gymnastics, music lessons, school projects, and camps. CP 32. The agreed parenting plan provided:

If the cost exceeds father’s pro rata share of \$300 per month, the mother may schedule the children. If the father’s pro rata share would be greater than his pro rata share of \$300, his total responsibility for extracurricular activities is capped at \$300.00 per month.

CP 736. Plan). Thus, the father’s pro rata share could not exceed \$300 monthly, but the mother was authorized to schedule the activities after seeking but without receiving the father’s agreement.

The plan also provided that the mother must “invoice the father within 30 days of incurring said expense.” CP 736.

The commissioner ordered payment in accord with the parenting plan provision, clarifying that the father’s \$300 “cap” is based on a monthly average. CP 703. However, the commissioner also included the figure of \$300 on the worksheet, thus obligating the parents to pay a pro rata share of these expenses up to \$300 monthly as part of their child support obligation. CP 711. The commissioner also ordered the parties to participate in a quarterly reconciliation of these activity costs and payments. *Id.*

On revision, the mother asked the court to strike this mechanism in favor of an annual reconciliation, in light of the protection order and the fact “the parties cannot communicate.” CP 365. The court granted revision on this point and struck the reconciliation requirement altogether. CP 390. Otherwise, the judge affirmed the commissioner’s order. CP 390; RP (02/15/11) 41-44.

Thus, the court also left in place the commissioner’s award of attorney fees to the mother in the amount of \$2500, based on the father’s intransigence, which the commissioner based on the following findings:

- failure to comply with Orders on two Motions to Compel

Answers to Interrogatories;

- failure to voluntarily provide information to the mother;
- failure to disclose sale of business in a timely manner;
- the father's financial declaration lacked credibility.

CP 362.

The father appealed and the mother cross-appealed. CP 955-958, 959-983. The mother hereby waives her cross-appeal.

V. ARGUMENT IN RESPONSE TO FATHER'S APPEAL.

A. THE TRIAL COURT CORRECTLY APPLIED THE STATUTORY CHILD SUPPORT TABLES IN EFFECT AT THE TIME OF TRIAL AND DID NOT ABUSE ITS DISCRETION WHEN IT MADE THE NEW CHILD SUPPORT PAYMENT RETROACTIVE TO THE DATE THE PETITION TO MODIFY WAS FILED.

In 2009, the Legislature amended the child support table, leaving the existing amounts unchanged, but extending the combined monthly income portion of the table from \$7000 to \$12000, with commensurate increases in monthly support. RCW 26.19.020. Thus, the new table accounts for changes that have occurred over several decades, such as the fact that many families have two working parents and earn combined monthly net incomes in excess of \$7000.

Though signed into law on April 13, 2009, the statute became effective on October 1, 2009. RCW 26.19.020.⁴ Under the new table, the basic child support obligation for the two children in this family would be \$1165 per child, as compared to the former maximum presumptive amount of \$767 per child. Here, in the order entered on January 14, 2011, the court used the figure in effect at that time, i.e., the higher of these figures, in calculating child support. CP 710. The court also made the child support obligation retrospective to August 1, 2009, the first full month after the mother filed her petition to modify. The father complains the court should have applied the prior version of this statute at the trial in January 2011 because the petition was filed in August 2009, two months before the effective date of the revised statute. Br. Appellant, at 7.

This complaint can be broken down into two separate inquiries. First, what statute should the court have applied at trial? Second, if it applied the revised statute, was the court permitted to make the new order retroactive to the date of filing?

First, the court correctly applied the revised statute. "Under common law, pending cases must be decided according to the law

⁴ <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1794&year=2009> (act "takes effect")

in effect 'at the time of the decision.'" *State v. Brewster*, 152 Wn. App. 856, 859, 218 P.3d 249 (2009) (internal citation omitted). In January 2011, the new economic table was in effect and the trial court properly applied it. The father cites no authority for the contrary proposition.

Second, when modifying child support, "[t]he trial court has discretion to make the modification effective on the filing date of the petition, the date of the order, or at any time in between." *In re Marriage of Holmes*, 128 Wn. App. 727, 741, 117 P.3d 370 (2005). The father here fails to show, or, even, to argue, any abuse of discretion in the court's selection of an effective date for the new child support order.

In fact, the court was correct to apply the updated table and to apply the new amount retrospectively since doing so reflects the legislative judgment that the higher amount is necessary to meet the basic needs of the children. RCW 26.19.001 (child support intended to meet child's basic needs and provide additional support commensurate with parents' income, resources, and standards of living). Thus, the court properly applied the new economic table and did not abuse its discretion in making the new order effective as of August 2009.

B. THE MODIFICATION IS AUTHORIZED BY THE PARTIES' AGREEMENT.

This proceeding began incidental to the mother's petition to modify the parenting plan. In that petition she claimed that child support should be modified if the parenting plan was modified. CP 2. The father cross-petitioned to modify the parenting plan and likewise claimed that child support should be modified if the parenting plan was modified. CP 808. The parenting plan was modified by agreement and the parties stipulated to trying the child support issue by affidavit. CP 727-743; CP 953-954. Thus, the father actively invoked the court's jurisdiction to decide the child support issue by asking for that relief in his cross-petition. *Teitzel v. Teitzel*, 71 Wn.2d 715, 430 P.2d 594 (1967) (petition to modify invokes court's jurisdiction). He also failed ever to object to the court hearing the action. RAP 2.5(a). Both because he asked the court to modify child support and because he waived any objection to the court doing so, he cannot now complain that the court did as he asked.

C. THE MODIFICATION IS ALSO AUTHORIZED BY THE CHANGE IN THE TABLES.

A child support order may be modified for various reasons, including "[c]hanges in the economic table or standards in chapter

26.19 RCW.” RCW 26.09.170(7)(a)(ii). Here, the legislature updated the child support tables for the first time in decades. Two years later, the superior court heard the petition to modify child support for the Kendall children. The father argues that the change in the tables cannot justify this modification because the mother never pled the change as a basis and the court made no finding to that effect. Br. Appellant, at 11.

First, as pointed out above, the father also asked the court to modify child support. Second, what matters here is whether the children’s basic needs are met. RCW 26.19.001. In respect of this goal, and as a general principle, this Court may affirm on any basis “established by the pleadings and supported by the record.” *In re Marriage of Rideout*, 150 Wn.2d 337, 358, 77 P.3d 1174 (2003). As the court in *Rideout* observed, a reviewing court can sustain a trial court order “under a different statute than the one relied upon by the lower court.” *Id.* (regarding attorney fees) (internal citations omitted). Here, the court found a modification justified by a separate subsection of the statute, the change of income prong. RCW 26.09.170(7)(a)(i). Certainly, this court may affirm on a different subsection of the same statute whether or not this court affirms the trial court’s finding that there was a change of income.

D. THE MODIFICATION IS ALSO AUTHORIZED BY THE CHANGE IN THE PARENT'S INCOME.

The modification is also justified by the change in the parents' income, as the trial court found. It is undisputed the mother's income changed by nearly \$2000. CP 710, 722. Thus, despite the trial court finding that the father's income was the same as it was in 2006, the statute is satisfied by the court's finding. RCW 26.09.170(7)(a)(i).

E. THE TRIAL COURT'S FINDING RE: INCOME IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

Here the trial court found the father's income to be \$7500 monthly. The father claims this figure is too high and the mother claims this figure is too low.

First, this Court defers to the trial court's findings if supported by substantial evidence. *Thompson v. Hanson*, 142 Wn. App. 53, 60, 174 P.3d 120 (2007), *aff'd*, 167 Wn.2d 414, 219 P.3d 659 (2009) (appellate court defers to the trier of fact on issues involving conflicting testimony, the credibility of the witnesses, and the persuasiveness of the evidence). "Substantial evidence is a quantum of evidence sufficient to persuade a rational fair-minded person that the premise is true." *Id.*, *citing Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000).

There was substantial evidence to support that the father's income was at least \$7500 gross monthly. He had agreed this was his income five years earlier, in 2006, when the original order of child support was entered. Bank statements show deposits to his personal account of \$25,000 monthly, on average, over the course of a year (2009-2010). Thus, even though his financial declaration made it appear as if he was running a deficit every month, the court properly found the declaration not credible. RP (01/14/11) 36-37. Like the commissioner, the trial judge saw reason to believe the father was earning \$7500 gross monthly, but also expressed frustration at the father's failure to disclose fully his finances. RP (02/15/11) 41-42. As both judicial officers observed, there was no evidence the father was having to borrow to cover his monthly expenses. Quite the contrary. He was paying an extra \$2000 against his mortgage for his high-value personal residence.

Moreover, just to cut to the chase, it is undisputed the father has substantial resources: a million dollars of equity in his residence; an 82% interest in a real estate company with holdings valued at \$3 to \$4 million. In short, there is no doubt the father has extensive wealth and it does not matter if he can make it appear he has little income.

This is so because, first, to determine child support, the court considers “*all* income and *resources* of each parent’s household.” RCW 26.19.071(1) (emphasis added). The statute goes on to list examples of income, but the list is not exclusive. RCW 26.19.071(3) (“Except as specifically excluded in subsection (4) of this section, monthly gross income shall include income from any source, including:…”). In short, unless expressly excluded in RCW 26.19.071(4), every kind of income and every kind of financial resource is to be considered.

For example, this Court has held that proceeds from the exercise of stock options must be included in the gross income calculation, despite that the proceeds were immediately used to purchase different assets. *In re Marriage of Ayyad*, 110 Wn. App. 462, 38 P.3d 1033 (2002). Thus, the father’s attempt to diminish the significance of the exchange of one asset (the real property in Fremont) for another (a REIT) because it resulted in no cash proceeds simply makes no difference for child support purposes. Indeed, the fact that the father chose to tax shelter the proceeds speaks volumes about his financial circumstances. In any case, even a total lack of income will not excuse a parent’s child support obligation where other assets exist. *In re Marriage of Blickenstaff*,

71 Wn. App. 489, 498, 859 P.2d 646 (1993) (incarcerated parent could meet obligation with assets, such as pension fund).

The father here seems to think that he can, by rendering himself “asset rich” and “cash poor,” simply excuse himself from the obligation to support his children at the level legislatively determined as necessary. While this may be an effective tax strategy, it is useless where the goal is to provide for the children. The trial court’s finding with respect to his income is supported by substantial evidence, especially in light of the father’s lack of forthrightness in disclosing his financial circumstances.

F. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT ORDERED THE FATHER TO CONTRIBUTE TO THE COST OF THE CHILDREN’S EXTRACURRICULAR ACTIVITIES.

The court commissioner ordered the father to contribute to extracurricular activities, the cost of which was proven to be at least \$300 monthly, and, on revision, the court relieved the mother of the requirement to reconcile the costs of those activities, so as to limit contact between the parties. CP 390.

The court may order a parent to contribute to extraordinary expenses pursuant to RCW 26.19.080(3). This is a discretionary decision of the court’s. RCW 26.19.080(4). The statute further requires that any expense so ordered be allocated proportionally

between the parents in the same ratio as the basic child support obligation. *Id.*

Here, there was no question but that the extraordinary expense met or exceeded \$300 monthly. RP (02/15/11) 7, 30-32. However, the father disputed that his monthly share of the expense could be as much as \$300, despite the language of the parenting plan. RP (02/15/11) 25-30. The mother objected to the requirement to communicate with the father as a precondition to his paying his share. RP (02/15/11) 6-8. The mother also objected to the commissioner having put \$300 on the worksheet, since that did not reflect what the mother actually spends or what the father's contribution could include (i.e., up to \$300). RP (02/15/11) 8-11. She proposed requiring the father to pay a flat fee of \$150 per child as part of his transfer payment each month, which is still less than the father's share of what the mother incurs for extracurricular activities. *Id.* By contrast, by leaving \$300 on the worksheet, the father contributes only 45%, or a total of \$135 for both children, instead of up to \$150 per child (a total of \$300).

However, the court decided not to revise the order of child support in this regard, but did relieve the mother of any obligation to reconcile the extraordinary expense. CP 390; RP (02/15/11) 44.

Both of these decisions are supported by substantial evidence and fall well within the court's discretion. See *In re Marriage of Griffin*, 114 Wn.2d 772, 776, 791 P.2d 519 (1990) (discretionary child support decisions will rarely be overturned on appeal). The father has three times agreed to parenting plans with restrictions because of domestic violence. He is now the subject of a domestic violence protection order, which the court has renewed annually. His conduct in litigation has likewise been improper, with multiple assessments of attorneys fees against him. The children are entitled to his financial support, but cannot receive it if the mother must endure a pitched battle to obtain it. In light of these circumstances, the court acted well within its discretion in structuring the manner by which the father contributes to the children's extraordinary expenses, particularly since his contribution is much less than what the mother incurs and less than his actual obligation.

VI. MOTION FOR ATTORNEY FEES

The mother requests fees on the basis of intransigence and based on her need for attorney's fees and the father's ability to pay them.

The law is well established that intransigence will support an award of attorney's fees regardless of financial ability. *Fleckenstein v. Fleckenstein*, 59 Wn.2d 131, 133, 366 P.2d 688 (1961); *In re Marriage of Crosetto*, 82 Wn. App. 545, 563-564, 918 P.2d 954 (1996); *In re Marriage of Morrow*, 5 Wn. App. 579, 590, 770 P.2d 197 (1989). The trial court awarded fees on this basis and the mother asks this Court do so as well. The limited history of litigation pertinent to his appeal, augmented by what the docket reveals, makes plain the need to discourage the father's behavior, which perfectly exemplifies the "quality or state of being uncompromising." *Schumacher v. Watson*, 100 Wn. App. 208, 216, 997 P.2d 399 (2000). Here the father appealed an order modifying child support, relief he himself requested, and setting his obligation according to his admitted income from five years ago. Despite his efforts to obscure his finances, it was established at least that he is possessed of great wealth, certainly enough to support his children at the level the legislature deems necessary for their basic needs. By driving up the mother's costs of seeking the court's help when needed to take care of these children, the father effectively diminishes the resources available to the children. This is wrong.

Second, statute authorizes fees on the basis of relative financial circumstances:

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorney's fees or other professional fees in connection there with, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

RCW 26.09.140; see, also RAP 18.1. Here, the father possesses substantial wealth, running in the millions of dollars. The mother is rearing two children almost entirely by herself and contending with the father's litigious conduct. Though employed, she has had to borrow against her home to pay her attorney. Because the father can pay, and the mother needs him to pay, the court should award attorney fees to the mother.

VII. CONCLUSION

For the reasons above, Carolyn Christine Kendall respectfully asks this Court to affirm the trial court in respect of its authority to enter a child support order and to apply current law (i.e., the economic table) to the calculation of support, retrospective to the date she filed her petition, as well as to affirm that Jeffrey Kendall, at minimum, earns a gross monthly income of \$7500 and

should be obligated to contribute his proportionate share of \$300 monthly as extraordinary expense. Finally, Carolyn requests her fees and costs.

Dated this 9th day of November 2011.

RESPECTFULLY SUBMITTED,



PATRICIA NOVOTNY #13604
Attorney for Respondent

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In re the Marriage of:

JEFFREY ELDON KENDALL

Appellant/Cross-Respondent

and

CAROLYN CHRISTINE KENDALL

Respondent/Cross-Appellant

No. 66835-8-1

DECLARATION
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Jayne Hibbing certifies as follows:

On November 9, 2011, I served upon the following true and correct copies of the Brief of Respondent, Supplemental Designation of Clerk's Papers by Carolyn Kendall and this Declaration, by:

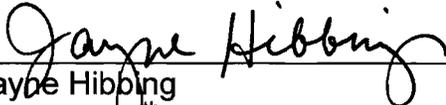
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I certify under penalty of perjury that the foregoing is true and correct.



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