Supreme Court No. _____

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

LARA B. SEEFELDT,

Respondent,

v.

Albert W Coburn

Appellant

APPEAL FROM KING COUNTY SUPERIOR COURT

THE HONORABLE JANET HELSON

No. 16-3-06380-6

Motion for Discretionary Review
TREATED AS A PETITION FOR REVIEW

Appellant ALBERT COBURN (Pro Se)

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IDENTITY OF PETITIONER

Appellant is Albert Coburn (Coburn), in the below Court of Appeals Division One Case No. 865021. Respondent is Lara Seefeldt (Seefeldt).

Coburn is without counsel, is not schooled in the law and legal procedures, and is not licensed to practice law; therefore, his pleadings must be read and construed liberally. See *Haines v. Kerner*, 404 US at 520 (1980); *Birl v. Estelle*, 660 F.2d 592 (1981). Further Coburn believes that this court has a responsibility and legal duty to protect any and all of Coburn's constitutional and statutory rights. See *United States v. Lee*, 106 US 196,220 [1882].

COURT OF APPEALS DECISION

Coburn seeks review of decision of *In the Matter of the Marriage of LARA BROOKE SEEFELDT, Respondent, and ALBERT WHITNEY COBURN, Appellant. Case No.* 65021. (Appendix A) and requests the Court reverse the Court of Appeals and grant review of the trial court's decision under RAP 2.3(b) and RAP 13.S(b).

ISSUES PRESENTED FOR REVIEW

A. **Did Court of Appeals err by failing to address whether compliance with the private school support order was within financial means before enforcing penalties for non-compliance?**

The ruling concerns a King County Family Court decision finding that Coburn, a parent of a disabled minor child, failed to properly invoke arbitration regarding private versus public school attendance for the 2023-2024 school year and holding him in contempt for failing to pay tuition costs which exceeded his disposable earnings. The trial judge, Janet Helson, had previously ordered private school attendance for a disabled minor child on April 22, 2022, mandating private education over a public-school alternative and modifying how parenting plan arbitration would occur without a parenting plan modification. No assessment was conducted to determine

whether Coburn had sufficient disposable income, savings, assets, or access to credit to cover the additional private school tuition costs prior to the contempt hearing. See Statement of Case. Arguments raised by Coburn and court responses:

- Unclear Support Amount: Coburn argued the order requiring three continuous years of private school lacked a specific support figure, making enforcement improper.
- Failure to Assess Ability to Pay: Coburn presented evidence showing the tuition increased his obligations by 72% and that his total child support obligations equaled 169% of his disposable income (CP 177-86). He contended that arbitration—required by the agreed-upon parenting plan—had not occurred and should have been resolved before a contempt hearing. Additionally, the court failed to evaluate his financial capacity when ordering private school attendance (financial evidence was dismissed, no child support worksheet created), violating his 14th Amendment due process rights.

The Court of Appeals upheld the ruling, concluding Coburn was able—but unwilling—to pay tuition directly to the private school. It dismissed his financial evidence as inadequate, stating it should have been presented in arbitration that Coburn allegedly failed to invoke, and reaffirmed that

proving inability or unwillingness to comply rests solely on the party resisting contempt.

B. **Did Court of Appeals err in ignoring evidence indicating that the disabled child was struggling academically at the private school and whether the private school meets federal requirements for the least restrictive learning environment for the child?**

The Court of Appeals ruled that private school efficacy was irrelevant to Coburn's non-compliance with tuition payments. However, Coburn presented district test scores showing the child was significantly behind her peers after the 2022-2023 school year (CP 91). Seefeldt provided no contrary academic evidence, nor was required to do so for continued private school attendance through 8th grade. The private school itself held no obligation to follow an IEP process and requested that parents sign an injury liability waiver absolving responsibility for educational inadequacies. See Statement of Case.

Arguments raised by Coburn and court responses:

- Lack of Educational Oversight: Coburn argued that when ordering or enforcing private school attendance for a disabled child, the Court must require that substantial upwards deviations from standard child support be substantially warranted. To enforce payment of

> extraordinary educational or medical expenses, the state must assess need and efficacy. This was not done and this failure violated the child's federal right to public school education in the least restrictive environment and rendered the order unenforceable.

The Court of Appeals dismissed this, stating that Coburn's concerns about private school efficacy vs public school attendance should have been addressed through arbitration, which was ruled he failed to invoke, were irrelevant to the contempt motion (No. 86502-1-I Division 1 Unpublished Opinion pg. 7).

C. Did Court of Appeals err in holding Coburn in contempt for not signing private school contract containing injury liability release?

Coburn's non-payment of the tuition for court ordered private school attendanc**e** was due in part to the fact that the private school required a signed contract that included a liability waiver for injury to the child and would not accept payment from Coburn unless he signed the contract. (VRP at Pg. 6, lines 13-18). Coburn had a strong disagreement with this requirement due to the "*injury Evelyn sustained while at APL"* (CP 73) the previous 2022-2023 year and concerns about continued inadequate education (CP 91). Seefeldt specifically requested the court to order Coburn to sign the contract, but the trial judge ruled only on failure to pay tuition.

The only supporting evidence included was the APL contract, which required Coburn's signature, and a statement from APL confirming this requirement. See Statement of Case for additional facts.

Arguments raised by Coburn and court responses:

- Coburn argued that APL required him signing the contract for payment to occur and any claim it was not required was hearsay, and that enforcing penalties for non-payment effectively coerced him into signing a liability waiver violating the Equal Protection clause of the 14th Amendment that requires persons in like circumstances to be treated similarly.

Court of Appeals dismissed this indicating *no evidence in the record supports Coburn's claim that APL will not accept payment from him unless he signs an enrollment contract and agrees to a liability waiver.* (No. 86502-1-I Division 1 Unpublished Opinion pg. 4).

D. **Did the Court of Appeals err by relying on unverified claims rather than direct evidence to determine Coburn willfully refused to pay private school child support?**

The Court of Appeals ruling concerns Seefeldt's request for contempt, alleging Coburn *refused to sign the private school contract* (CP 18). However, APL was not a party to the case and did not issue an invoice or

payment statement for the 2023-2024 school year. No evidence from APL confirming Coburn's obligation to pay was presented at the contempt hearing, and the school itself did not attempt to collect tuition from him. Additionally, ten days before filing for contempt, Seefeldt presented a signed promissory note from her father, ostensibly to pay the outstanding tuition (CP 18, 63), but did not inform Coburn she had borrowed this money and presented no receipts that this money was actually received and applied by APL to the tuition balance.

- Unverified Financial Obligation: Coburn argued he had not received an invoice and did not know where to send tuition payments. He also contended there was no proof Seefeldt had paid full tuition as claimed. Coburn asserted that without evidence from APL confirming the amount due, the enforcement of payment was improperly based on hearsay.

Court of Appeals dismissed this argument stating that *Coburn did not dispute his failure to pay his proportional share of tuition.*

E. **Did the Court of Appeals err by contradicting itself on the Division of Child Support's (DCS) authority to enforce child support obligations?**

The Court of Appeals ruled that DCS was not required to enforce educational expenses. Seefeldt repeatedly sought DCS enforcement for APL

tuition before the child's 5th and 6th grade years, but DCS refused, stating modification of the child support order was necessary. Before the contempt hearing, Coburn also requested DCS enforcement via wage garnishment. DCS rejected this, citing the need for a sum certain amount in a court order. Arguments raised by Coburn and court responses:

- DCS Authority and Lack of Willful Non-Payment: Coburn argued requesting garnishment was not willful refusal to pay. He contended that, based on a prior Court of Appeals ruling, DCS and state law authorize enforcement of all support—even without a sum certain amount.

The Court of Appeals responded that DCS was *not legally required, or authorized, to enforce his tuition obligation when no specific monthly amount was set forth in a child support order*.

STATEMENT OF THE CASE

Coburn and Seefeldt share a disabled child with autism (CP 15). In 2016, Seefeldt and her family accused Coburn of child abuse in a divorce petition, but the allegations were never reported to Child Protective Services (CPS), merely used as a basis to seize primary custody of the child after Coburn lobbied for joint custody. At the hearing for temporary orders, Seefeldt was awarded sole authority over

medical and educational decisions (CP 15), continued to voice allegations, Coburn's rights were restricted yet CPS was still not contacted and he was granted unsupervised visitation. To prove his innocence and regain time with his daughter, Coburn participated in mediation and ultimately agreed to a financial settlement in exchange for expanded visitation. Seefeldt then dropped all abuse claims, proving they were meretricious.

The agreement formed the basis for the final 2018 parenting plan and 2018 child support order (CP 11-14), which outlined Coburn's visitation rights and financial obligations, including responsibility for 70.2% of medical and educational expenses (CP 42, 45). The child support order required Coburn pay monthly child support to Seefeldt directly. Seefeldt then alleged to DCS that Coburn had not paid 7 months of basic child support in 2019. This was a lie; he had. DCS attempted to collect $20,880.80 in back support that Coburn had already paid. A court ruling on 04/12/2019, found no back support was owed but ordered future payments to be made through DCS (CP 257-58), for Coburn's protection against future false claims.

Sadly, DCS has refused to follow the court order that all support payments be enforced and simply garnish Coburn's wages but did not and do not enforce medical or educational expenses, most likely due to avoidance of challenges that come with high conflict cases and continuing expenses that exceed maximum wage

garnishment caps that both Seefeldt and court orders flout. Court of Appeals ruled on 09/19/2022 that modification of 2018 child support was not needed for DCS enforcement of all expenses (*Coburn v. Dep't of Soc. & Health Servs*., No. 83557-2-I (Wash. Ct. App. Sep. 19, 2022)). Despite this ruling, DCS continued excluding medical and educational support from enforcement.

The 2018 final parenting plan outlines procedures for disputes regarding medical and education-related support obligations. It provides that any "new medical or educational services" which would require a financial contribution of over $500 or $100 per month "*will be subject to arbitration if the father gives written notice of objection within 1 week of receiving notice.* (CP 24*)*." In 2019, the court removed third-party arbitration and retained jurisdiction, with Judge Janet Helson overseeing motions since 2020.

Seefeldt enrolled the child in a private school (APL) for 4th grade the 2021-2022 school year after Coburn homeschooled their daughter full-time during Covid. Coburn signed the contract upon agreement that he would not back further attendance if significant progress was not made. For 5th grade, he objected on the basis of non-efficacy but was over-ruled by the Court. Judge Helson ordered continued enrollment through 8th grade unless Coburn invoked arbitration (CP 25) and gave a deadline of "*no later than May 1, 2023, the father shall either confirm*

his agreement or invoke arbitration" (CP 25). The court order did not assess Coburn's financial ability to pay.

Order acknowledged APL required parents to sign stating, *parents are required to sign a new contract each year* (CP 25). The private school contract contains requirements regarding the amount to be paid, when, and a bank deduction agreement. It furthermore contained a release of liability of injury for any injuries to the child while in attendance at the school (CP 90). Both parties asked the DCS to additionally enforce 5th private school tuition which would allow Coburn to pay the APL tuition through DCS and not have to sign the contract. DCS refused and indicated the 2018 child support order must be modified to include educational tuition as child support (CP 205). With no ability to pay through DCS, Coburn signed the contract for 5th grade fearing contempt.

For 6th grade, Seefeldt notified Coburn of continued private school attendance (CP 18, 52). Coburn objected, citing financial hardship writing that "*I don't have the money. Can't afford to live*" (CP 52). During 30-day arbitration deadline, Seefeldt withheld the child from visitation. At a parental visitation enforcement hearing on 06/05/2023, arbitration did not occur (CP 163-64, 172). Concerned about his daughter's prior injury at APL, Coburn refused to sign the contract. Seefeldt in response demanded Coburn *sign the school contract and contribute your proportionate share of the tuition, this would be in line with the Court's orders and*

our shared responsibilities (CP 56). Both parties again sought DCS enforcement, but DCS declined, citing the need for a modified child support order and sum certain amount (CP 58). Seefeldt filed a motion as for contempt indicating Coburn willfully *has refused to sign the contract for the new school year* (CP 18). Seefeldt contempt motion requested "*Albert be required to sign*" (CP 6) private school contract but presented as evidence a signed promissory note with her father signed just 10 days before filing for contempt as proof, she already paid Coburn's proportional share of tuition. Seefeldt demanded Coburn be required to pay *full share of Evelyn's tuition for the 6th grade ($21,060), and require him to pay said amount within 72 hours* (CP 6). Trial judge declined to require Coburn to sign contract or full payment within 72 hours and ruled that because Coburn had failed to invoke arbitration was able to pay in willfully failed to pay support to the private school and in contempt (CP 239). Order required DCS enforcement of tuition payment to date paid to Seefeldt, with a purge contingency that Coburn pay remaining school year payments to private school (CP 240-41). Coburn appealed (CP 249).

ARGUMENT

Question A: Did Court of Appeals err by failing to address whether compliance with the private school support order was within financial means before enforcing penalties for non-compliance?

Argument A:

Explicit Financial Burden: The Court of Appeals erred in this regard. Imposing child support obligations that exceed a parent's ability to pay risks equating compliance with financial impossibility, essentially creating a modern form of debtor's prison. There was an absence of a clear financial assessment in the original 04/22/2022 court order requiring private school attendance as it did not contain: a sum certain amount of tuition costs, did not include financial declarations as required by Local Family Law Rule 10[1], or a child support worksheet as required by RCW 26.19. Intent of legislators is made clear by RCW 26.19.001(1) that completing child support worksheet was to increase the *adequacy of child support orders through the use of economic data as the basis for establishing the child support schedule*. Without evaluating Coburn's ability to meet the child support obligations, the courts imposed penalties that disregarded financial feasibility, leading to procedural uncertainty and inequity. It is uncontested that Coburn requested a child support modification 04/22/2022 that was denied (CP 25) and his appeal was also denied (Brief of Resp. pg. 13). "*It is well settled that 'the law presumes that one is capable of performing those actions required by the court ... [and the] inability to comply is an affirmative defense.' [Cite omitted.] But*

[1] (LFLR 10)(a)(1) *each party shall complete, sign, file, and serve on all parties a financial declaration for any motion, trial, or settlement conference that concerns the following issues* ***(A)*** *Payment of a child's expenses, such as tuition*.

exercise of the contempt power is appropriate only when 'the court finds that the person has failed or refused to perform an act that is yet within the person's power to perform.' ...Thus, a threshold requirement is a finding of current ability to perform the act previously ordered." *Britannia Holdings Ltd. v. Greer*, 127 Wn. App. 926, 933-34, 113 P.3d 1041 (2005) (emphasis added). Coburn argued that compliance with the court's order was impossible because he was already "*living in a van*" and presented evidence showing his obligations exceeded 100% of his disposable income and consisted of 169% of his disposable income for 2023 (CP 177-186). Though the trial judge observed "*the reality is, given these parties ...levels of income, it doesn't really appear to me that they can pay $30,000 a year for their child's education*." (VRP at pg.17, lines 18-20), but the judge dismissed Coburn's financial evidence without any evaluation. Courts should allow parties to address perceived deficiencies in financial evidence before rendering a judgment on contempt when determining payment is *within the person's power to perform* and in doing so is violation of *due process*. In *Marriage of James*, the Court of Appeals reversed a finding of contempt of a parenting plan, finding that the trial court was required to find bad faith. *James* also urged trial courts to consider lesser sanctions: "*A trial court may also find a party in contempt when it has first tried to resolve parenting violations with lesser sanctions which did not achieve the requisite compliance with the plan." Marriage of James*, 79 Wn. App. 436,

441, 903 P.2d 470 (1995). The Court of Appeals did uphold Coburn's right to invoke arbitration simply by objecting in writing within the specified deadline as per the parenting plan; nonetheless, they upheld the trial judge's decision to withhold arbitration from Coburn on the basis that his objection stated in the time frame did not contain the word "arbitration." This is a provision that is not in the parenting plan.

Regardless of whether Seefeldt had already enrolled the child in the private school, the most obvious lesser sanction would have been to order the parties into arbitration and submit LFLR 10 financial declarations to determine financial feasibility for both parties, otherwise a judgement cannot be made claiming Coburn was *able to pay* and was in bad faith. An additional lesser sanction could have been order for the DCS to enforce tuition payments, as trial court acknowledged "*DCS will not collect them until reduced to a judgment, which this is about to be*." (VRP pg. 19-20, lines 22 1). Trial judge chose a punitive finding of contempt of child support, specifically over all less sanctions, and Court of Appeals affirmed.

Question B: Did Court of Appeals err in ignoring evidence indicating that the disabled child was struggling academically at the private school and whether the private school meets federal requirements for the least restrictive learning environment for the child?

Argument B:

False Narrative: The Court of Appeals opinion, which dismisses the relevance of private school efficacy, obscures critical facts. A disabled child was ordered to attend private school from 6th to 8th grade without any substantial proof that the private school offered services that public school could not offer nor annual review of academic progress. The school bears no obligation to provide an adequate education, as evidenced by a liability waiver, absolving the school of responsibility, including for any failure to educate the child properly.

The trial judge's 04/22/2022 order stated that if Coburn did not arbitrate middle school enrollment, Seefeldt's proposed arrangement—including cost-sharing—would be ratified. However, neither parent sought continuous enrollment without academic evaluation. Despite the court mandate for private school attendance, Seefeldt recently transferred the child to public school for 7th grade—violating the same order under which Coburn is now held in contempt.

The state mandated that a disabled child attend private school for four years without conducting any assessments of academic progress, despite evidence of poor outcomes. Autism is listed as an eligibility category under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400) which gives Evelyn (the child in the case) rights and protections. This law ensures that children with

disabilities have the right to a Free Appropriate Public Education (FAPE) (20 U.S.C. § 1400(d)(1)(A) (2006)) tailored to their individual needs including the right to an Individualized Education Program (IEP), which outlines specific educational goals and services for the child. "*To achieve this aim, the IDEA compels those states receiving federal funding to educate children with disabilities "to the maximum extent appropriate. . . . with children who are not disabled," and to do so "in the least restrictive environment consistent 9 with their needs."" El Paso Independent School District v. Richard R. ex rel R.R.,* 567 F. Supp. 2d 918 (W.D. Tex. 2008)(emphasis added). APL is a private company that has no obligation to follow IDEA laws or fill in Evelyn's IEP, a cornerstone of IDEA rights provided to Evelyn. As a result while attending APL, Evelyn's IEP academic and functional goals have not been completed. Coburn provided trial court test scores proving that "*Evelyn remains well behind compared to her peers and has a lower than average growth in all three testing areas. These results are not an anomaly, rather have been the consistent mean (low or just average growth) since she started attending APL*." (CP 91). The response the trial court stated, "*I suspect at some level Mr. Coburn thinks it's better for Evelyn, notwithstanding all his complaints, to be in APL because if he didn't he would have timely filed something and we wouldn't be here."* (VPR pg,18 lines 4-7) RCW 26.09.002 indicates *in any proceeding between parents under this chapter, the best interests of the child shall*

be the standard by which the court determines and allocates the parties' parental responsibilities. While trial courts have the discretion to determine the reasonableness and necessity of extraordinary child support expenses a best interest of the child standard is indicated in RCW 26.19.080(4) and in *Mattson*, 95 Wn. App. at 599-600. "*In light of this important legislative goal, we interpret the terms 'necessary and reasonable expenses' . . . in a manner that serves the best interests of children*." Establishing if a disabled child is getting a necessary and reasonable education attending a private school ordered by the state and ensure it is *the least restrictive environment* should not be tied to whether or not Coburn files a motion; it is the court's stated commitment and responsibility to ensure best interest of the child. The lack of regular checks on academic progress should render the court order invalid and negates its justification for its enforcement.

Question C: Did Court of Appeals err in holding Coburn in contempt for not signing private school contract containing injury liability release?

Argument C

Court of Appeals ruling states: *Contrary to Coburn's arguments, the trial court neither found him in contempt for failing to sign the APL enrollment contract nor ordered him to sign that document. And no evidence in the record supports Coburn's claim that APL will not accept payment from him unless he signs an*

enrollment contract and agrees to a liability waiver. (No. 86502-1-I Division 1 Unpublished Opinion pg. 4). The private school was not a party in the case. The Court of Appeals ruling does not indicate that APL clearly indicated that if the enrollment contract was not signed then Seefeldt must pay the full amount of 2023-2024 tuition stating "*Thus, we are now writing to inform you that without both parties signing this form you [Seefeldt] will become the parent solely responsible for Evelyn's tuition*" (CP 18 61). No invoice from APL to Coburn was included as evidence by Seefeldt. Rather the APL contract signed by Seefeldt for 2023-2024 school year was included as evidence (CP 33) and if there is only one parent who signs the contract, they must pay the full amount. APL is a private company capable of performing their own independent collection actions against Coburn. If Coburn had made payments for 2023-2024 private school tuition without APL sending him an invoice for that payment, APL would have applied the payment for other invoices they were sending Coburn, which were 2022-2023 services. Seefeldt claim APL will accept payment without signing the contract, and Court of Appeals acceptance of this claim without direct confirmation from APL, qualifies as hearsay under Washington Rules of Evidence (ER 801-802). Seefeldt's claims should have been excluded, by not doing so the court pressured Coburn to sign the enrollment contract and held him in contempt for refusing to comply.

Question D: Did the Court of Appeals err by relying on unverified claims rather than direct evidence to determine Coburn willfully refused to pay private school child support?

Argument D

Contempt order holds Coburn in contempt for non-payment of support to APL but requires payment to Seefeldt through DCS for the amount, yet no evidence from APL was presented in court from APL confirming Seefeldt paid the full tuition she claims she paid. Seefeldt falsely accused Coburn in 2019 of not paying child support, which after DCS started collection action for $20,880.80 Coburn had to file in court to stop; Seefeldt has a history of attempting fraud. Seefeldt's statements about paying tuition, without supporting invoices or direct confirmation from APL, qualify as hearsay under Washington Rules of Evidence (ER 801-802). Seefeldt's claims should have been excluded and motion should have been dismissed until adequate evidence was presented.

Question E: **Did the Court of Appeals err by contradicting itself on the Division of Child Support's (DCS) authority to enforce child support obligations**

Argument E

In a 2022 ruling for the same Superior Court case (No. 16-3-06380-6 SEA) and the 03/18/2018 Child Support order, the Court of Appeals stated that DCS could enforce all child support payments. The ruling cited Seefeldt's request for DCS enforcement due to Coburn's alleged failure to pay copays for medical appointments and therapy, stating, "*DCS is authorized to garnish Coburn's wages without a court order*" (*Coburn v. Dep't of Soc. & Health Servs*., No. 83557-2-I (Wash. Ct. App. Sep. 19, 2022)).

Despite this, this Court of Appeal opinion has narrowed DCS enforcement to medical and childcare expenses only. Coburn argued that DCS must enforce all child support payments unless the 03/18/2018 order is modified, as both parents had requested DCS to enforce tuition payments—demonstrating Coburn's willingness to pay. In truth, Coburn was held in contempt for DCS's refusal to enforce tuition.

DCS responded to Seefeldt's enforcement request by stating that tuition payments require *a sum certain amount in a court order rather than a proportional share…*Alternatively, she could *obtain a judgment in court* (CP 58). RCW 26.23.110 establishes DCS enforcement procedures without distinguishing between medical and other types of support. No law excludes educational support from DCS enforcement. To uphold precedent, the Court of Appeals must rule that

DCS has authority over all child support listed in the order unless a trial judge provides a substantial legal basis for an exception.

CONCLUSION

The parenting plan's arbitration clause imposes a mutual duty—not a unilateral burden on Coburn to arbitrate. His written objection should have preserved the issue and paused enforcement until arbitration occurred, making the contempt ruling procedurally flawed.

The Court of Appeals upheld the trial court's discretion, but the result is inequitable. Even if tuition is enforceable, the purge order demanding $3,000 per month beyond existing obligations raises due process concerns. Child support is only valid when the party can comply, and Coburn's documented $4,800 monthly income, already exceeded by obligations, made compliance impossible.

DCS's refusal to enforce tuition supports the argument that the court order is structurally unsound. State garnishment laws cap recovery at 50% of disposable income, suggesting the payment schedule violates legal limits. The court's directive conflicts with administrative restrictions, making the purge conditions not just excessive but legally unenforceable. Civil contempt law requires purge conditions based on actual ability to pay, and coercive sanctions cannot be imposed for an amount that exceeds what remains after court-ordered expenses.

Coburn, despite full-time employment in a relatively high-paying job, has depleted his savings and can no longer obtain credit due to his low disposable income after child support. He now relies on the charity of others to meet basic living expenses.

The primary but not exclusive legal defect here lies in the courts' interpretation of the parenting plan’s arbitration provision and the assumption that Coburn's failure to initiate a court-directed arbitration process amounted to tacit agreement to the financial terms.

Total words 4999 (excluding Appendix A)

Respectfully submitted,

Albert W Coburn

APPENDIX A

FILED
3/10/2025
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of LARA BROOKE SEEFELDT, Respondent, and ALBERT WHITNEY COBURN, Appellant.	No. 86502-1-I DIVISION ONE UNPUBLISHED OPINION

DÍAZ, J. — Albert Coburn appeals from a March 2024 trial court order holding him in contempt and ordering him to pay his past due, proportional share of education expenses for his child. We affirm.

I. BACKGROUND

Albert Coburn and Lara Seefeldt share a child in common.[1] A 2018 final child support order required each parent to pay a proportional share of the child's educational expenses. The accompanying child support worksheet calculated

[1] Some of the background facts are derived from the first of our two unpublished prior decisions involving the parties. *See In re Marriage of Seefeldt*, No. 84010-0-I (Wash. Ct. App. Mar. 20. 2023) (unpublished), https://www.courts.wa.gov/opinions/pdf/840100.pdf.

Coburn's proportional share of the parties' combined income as 70 percent. And, as the parties agreed, the final parenting plan allocates sole decision-making authority for education to Seefeldt. For disputes over education-related support obligations, the parenting plan provides that any "new medical or educational services" which would require a financial contribution of over $500 or $100 per month are "subject to arbitration if the father gives written notice of objection within 1 week of receiving notice."

Seefeldt became dissatisfied with the educational and support services offered in the public school system during the COVID-19 pandemic and, for the 2021-2022 school year, enrolled the child in the Academy for Precision Learning (APL), a private school. Coburn did not object. However, the following year, in a proceeding seeking to modify parenting plan provisions, Coburn made a separate request to arbitrate enrollment at APL for the 5th grade.

In an April 21, 2022 order, the trial court denied Coburn's request to arbitrate. Noting Coburn's failure to object to enrollment at APL for the 4th grade, the trial court concluded that "[c]ontinuing at the same school for the balance of elementary school does not constitute 'new medical or educational services' such that it is subject to arbitration" under the parenting plan. The trial court rejected Coburn's argument that each year's enrollment at APL is a new educational service because the school requires parents to sign a new contract each year and observed that construing new educational services to begin at each level of schooling is in line with the child's "special needs and need for stability and consistency."

Nevertheless, the court determined that Coburn's acquiescence to enrollment in APL for elementary school "should not be considered agreement to her attendance through middle school and high school, even though APL is apparently a K-12 school." The court set forth a specific process for Coburn to object to enrollment at APL, or a different private school, for middle and high school. To that end, the court ordered Seefeldt to provide notice, by April 1, 2023, of her proposal for middle school and to indicate whether she was requesting that Coburn share tuition expenses. If Coburn wished to object, the order required him to "request arbitration of the issue" by May 1, 2023.[2] The order stated that "[i]f the father fails to invoke arbitration by May 1, 2023, the mother's school proposal (including the sharing of expresses) shall be deemed to be ratified for the period of 6th to 8th grade." The court's order was without prejudice to Coburn's ability to file a motion to modify or adjust child support "as permitted by state law." The court further provided that if Coburn filed such a motion within 10 days, he could request that relief be effective as of the February 2022 date that he filed his petition to modify the parenting plan. Coburn appealed the April 2022 order and this court affirmed.

Just before the April 1, 2023 deadline, Seefeldt notified Coburn that she intended to enroll the child at APL for middle school. Coburn did not file a motion to arbitrate or otherwise request arbitration.

In January 2024, after Coburn failed to pay his share of the tuition that had

[2] The order likewise sets forth the same process for high school, with specific dates in 2026 for Seefeldt's notice and Coburn's ratification or objection.

accrued for the 2023-2024 school year or sign APL's enrollment contract for the school year, Seefeldt filed a motion for contempt. Seefeldt requested, among other things, an order requiring Coburn to reimburse her for tuition she paid on Coburn's behalf and to pay attorney fees she incurred in bringing the contempt motion. In response, Coburn did not dispute his failure to pay his proportional share of tuition.

After a March 1, 2024 hearing, the trial court found Coburn in contempt for failing to pay his share of education expenses for the 2023-2024 school year.[3] The court observed that, despite the clear provisions of the April 2022 order, Coburn failed to file a motion or otherwise seek to arbitrate the issues of middle school enrollment and financial responsibility, although he had filed such a motion in the past and was "more than capable" of invoking arbitration. The court further noted that, while the inability to pay may be a valid defense to contempt, Coburn did not provide evidence, such as a financial declaration, tax documents, pay stubs for a relevant period of time, and/or bank account statements, which would have allowed the court to evaluate his ability to pay. Because Seefeldt had paid Coburn's share of tuition, $16,848, the court imposed judgment against Coburn for that amount, and authorized the Division of Child Support (DCS) to collect the judgment on Seefeldt's behalf. The trial court also awarded Seefeldt attorney fees of $4,022.48. The order provided that Coburn could purge the contempt by paying

[3] Contrary to Coburn's arguments, the trial court neither found him in contempt for failing to sign the APL enrollment contract nor ordered him to sign that document. And no evidence in the record supports Coburn's claim that APL will not accept payment from him unless he signs an enrollment contract and agrees to a liability waiver. The trial court also did not hold Coburn in contempt for "not filing a motion for arbitration."

the judgment owed and the two remaining tuition payments due for the 2023-2024 school year.

The court noted that, in accordance with the process set forth in the April 2022 order, there would be another opportunity to arbitrate school choice before high school. The court further observed that Coburn's only remaining remedy during middle school would be to file a motion to modify child support, which remained unchanged since entry of the final order in 2018, and could potentially change the parents' proportional shares of tuition going forward. The court stated that prefiling restrictions imposed on Coburn in May 2023 would not preclude such a motion.

Coburn appeals.

II. ANALYSIS

"If a parent fails to comply with a child support order, then a court may hold that parent in contempt." *In re Marriage of Didier*, 134 Wn. App. 490, 500, 140 P.3d 607 (2006). " 'Whether contempt is warranted in a particular case is a matter within the sound discretion of the trial court; unless that discretion is abused, it should not be disturbed on appeal.' " *Moreman v. Butcher*, 126 Wn.2d 36, 40, 891 P.2d 725 (1995) (quoting *In re King*, 110 Wn.2d 793, 798, 756 P.2d 1303 (1988)). "An abuse of discretion is present only if there is a clear showing that the exercise of discretion was manifestly unreasonable, based on untenable grounds, or based on untenable reasons." *Moreman*, 126 Wn.2d at 40.

A. Waiver of Arbitration

As he argued before the trial court, Coburn claims he invoked arbitration to

contest his financial responsibility for middle school tuition by promptly sending Seefeldt an e-mail message when he learned of her plan to continue enrollment at APL, stating, "I don't have the money. Can't afford to live." Coburn points out that nothing in the trial court's April 2022 order required a formal motion to arbitrate, and he argues that he reasonably construed the order to require only that he notify Seefeldt by e-mail. Coburn also contends that the parenting plan governs disputes regarding support obligations and requires only "written notice of objection" within one week. We disagree with each contention.

The court's April 2022 order, not the parenting plan, expressly governed this specific dispute about middle school enrollment and financial responsibility. That order set forth the specific deadlines and requirements to resolve any dispute. The order required Coburn to "request arbitration" or "invoke arbitration." Coburn's e-mail message did not mention arbitration, let alone request it or invoke that process. As the court pointed out, Coburn was aware of how to request arbitration, having filed a motion to arbitrate the previous year. And contrary to his position on appeal, Coburn's response to the motion for contempt acknowledged that the April 2022 order governed the process for objection. Coburn explained that he was unable to meet the May 1, 2023 deadline to request arbitration because he was "solely focused" on restoring his visitation at the time.

Substantial evidence supports the trial court's finding that Coburn waived arbitration of middle school enrollment and his obligation to pay his proportional share of tuition.[4] *See In re Marriage of Rideout*, 150 Wn.2d 337, 351-52, 77 P.3d

[4] Coburn's claims regarding the efficacy and appropriateness of APL's educational

1174 (2003) (this court reviews contempt findings for substantial evidence).

B. Ability to Pay

Coburn contends the evidence did not support the trial court's finding that he was able, but unwilling, to comply with the child support order and the trial court ignored his inability to pay.

An obligor claiming an inability to comply with an existing support order must specifically provide evidence showing "due diligence in seeking employment, in conserving assets" and otherwise attempting to meet their obligations. RCW 26.18.050(4). And, as the trial court observed, a party may assert a defense to contempt if, through no fault of their own, the party is unable to comply with the court order. *Britannia Holdings Ltd. v. Greer*, 127 Wn. App. 926, 933-934, 113 P.3d 1041 (2005). But, contrary to Coburn's position, it is the party resisting a finding of civil contempt who bears the burden of production and the burden of persuasion regarding any claimed inability to comply with a court order. *Moreman*, 126 Wn.2d at 40. And the evidence that shows inability to comply must be "of a kind the court finds credible." Id. at 40-41.

Coburn failed to satisfy his burden to establish due diligence or inability to comply. In response to the contempt motion, Coburn supplied a spreadsheet, which apparently he created, with entries for "Net Pay" earnings and "Support

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services may have been relevant had he arbitrated the issue of middle school enrollment and financial responsibility. But those arguments are not relevant to any issue related to the contempt order before us on appeal. And to the extent that Coburn raises issues about the punitive nature of the contempt sanctions and consideration of lesser sanctions, we decline to consider those arguments raised for the first time in his reply brief. *See* RAP 10.3(c); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

Payments" between January 2021 and December 2022. He also submitted a single pay stub for one two-week period in December 2023. Accordingly, Coburn did not provide sufficient underlying documents that would substantiate his consistent income and his expenses, such as a financial declaration, tax documents, pay stubs, and/or bank statements, and allow the court to evaluate his ability to pay. *See* KING COUNTY SUPER. CT. LOC. FAM. L. R. (LFLR) 10(b) (documents to be submitted with a financial declaration). And while the trial court expressed some concern about the affordability of the tuition for the parents and frustration with Coburn's focus on "frivolous arguments" and issues that had been resolved, instead of providing documentation to support a potentially meritorious argument, the court did not abuse its discretion in determining there was no evidentiary basis to conclude that Coburn was unable to comply with the child support order.

C. Unclean Hands

Coburn contends that Seefeldt did not have "clean hands" because, during the "same period" she was seeking to enforce the child support order, Seefeldt was "activity violating" the parenting plan's visitation provisions.

Coburn did not allege that Seefeldt failed to fulfill her own obligations under the child support order. And, as the trial court noted, any disputes involving visitation were unrelated to the parties' support obligations and did not provide a legal basis to excuse Coburn's obligation to pay his share of education expenses. *See McKelvie v. Hackney*, 58 Wn.2d 23, 31, 360 P.2d 746 (1961) (unclean hands equitable doctrine may disqualify an individual from seeking relief if the alleged

inequitable behavior concerns the same matter that is the subject matter of the complaint). The trial court did not abuse its discretion in rejecting Coburn's "unclean hand" defense.

D. Garnishment

Coburn also challenges the contempt order because (1) DCS refused to collect his share of tuition through garnishment, and (2) the contempt order effectively amounts to a ruling that statutory limits on garnishment do not apply.

Coburn's obligation under the child support order was unaffected by whether or not DCS agreed to collect Coburn's share of tuition expenses. And Coburn provides no authority suggesting that DCS was legally required, or authorized, to enforce his tuition obligation when no specific monthly amount was set forth in a child support order. *See* WAC 388-14A-3302(1),(5) (authorizing DCS to initiate a process, by serving a "notice of support owed" to set a fixed amount of support, which may then be enforced by DCS, but *only* for medical and child care expenses).

It appears that Coburn wants DCS to garnish his wages to collect both his support obligation and his share of tuition so that he may then argue that the total amount exceeds the limitations placed by federal law. *See* 15 U.S.C. § 1673 (provision of Consumer Credit Protection Act placing limits on wage garnishment). Coburn's argument fails to appreciate that (1) he did not provide evidence establishing that his share of tuition plus his monthly support obligation exceeds 50 percent of his disposable income; (2) any withholding order could not exceed 50 percent of his disposable income under Washington law, *see* RCW

26.23.060(5)(c) (any income withholding order issued by DCS must include a "statement that the total amount withheld shall not exceed 50 percent of the responsible parent's disposable earnings."); and (3) DCS need not garnish wages and may use other collection tools if wages are insufficient, such as asset seizure, liens, license suspension, contempt and federal income tax offset. *See* WAC 388-14A-4020 (listing collection tools that DCS may use). And again, Coburn's arguments primarily fail for the simple reason that DCS is not enforcing Coburn's obligation to pay educational expenses, nor is it required to do so.

E. Appellate Attorney Fees

Seefeldt requests fees on appeal under RCW 26.18.160, under which a prevailing party in an action to enforce a child support order is entitled to costs, including reasonable attorney fees, and RCW 7.21.030(3), under which a court has discretion to order a person found in contempt to reimburse for losses and costs incurred in connection with the contempt. Because she is the prevailing party, subject to compliance with RAP 18.1, we award Seefeldt reasonable attorney fees and costs on appeal as required under RCW 26.18.160.

III. CONCLUSION

We affirm.

Díaz, J.

WE CONCUR:

Chung, J.

Hazelrigg, ACJ

ALBERT COBURN - FILING PRO SE

May 02, 2025 - 4:02 PM

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