

No. 44151-9

NOV 15 2013
15:02
STATE OF WASHINGTON
COURT OF APPEALS
DIVISION II

COURT OF APPEALS

DIVISION II

OF THE STATE OF WASHINGTON

Clyde Reed Jr., Appellant

v.

Catherina Y. Brown, Respondent

SUPPLEMENTAL BRIEF OF APPELLANT
Revised November 14, 2013

Clyde H. Reed Jr
8216 SE 41st
Mercer Island, Wa
98040

TABLE OF CONTENTS

Table of Authorities.....Opening Pages

Assignment of Error.....1

Issues Pertaining to Assignment of Error.....1

Statement of the Case.....3

Argument.....5

Conclusion.....16

TABLE OF AUTHORITIES

STATUTES

26.19.071.....7, 9, 11, 13

26.19.0357

RULES

PCLR (7)(a)(3).....10, 12

PCLR 77

PCLR 7 (a) (5).....8

ASSIGNMENT OF ERROR

1. The trial court erred in accepting incomplete worksheets. The Respondent owns a business, and did not include reference to revenues and expenses of that business in her worksheets.
2. The trial court erred in failing to impute income to the Respondent, when she has a work history, education, health that meet state law definitions regarding voluntary unemployment.
3. The trial court erred in excluding consideration of business expenses by the Appellant in worksheets calculating net income.
4. The trial court erred in allowing the Respondent to claim credit for health care expenses of \$115.28.
5. The trial court erred in excluding medical expenses accrued by Appellant as a result of the date of the expenses, when the pertinent court order allowed both current and past expenses.
6. The trial court erred in accepting worksheets which referred to financial information from the 2009 year, which could not have been available until the end of that year--after the end of the trial.
7. The trial court erred in establishing a starting date of April 2009 for the effective period of the Order of Child Support, when the original trial did not occur until September 2009, and the original decision occurred in November 2009.

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

The trial court accepted the Respondent's worksheets which did not disclose a significant source of income. May the trial court accept incomplete worksheets? May the trial court justify the choice not to require complete worksheets because the Appellant did not initially identify the shortcoming at a proceeding for which six days notice was required, but only three days notice provided?

1. The trial court erred in accepting incomplete worksheets. The Respondent owns a business, and did not include reference to revenues and expenses of that business in her worksheets.

Must the trial court impute income to the Respondent who is unemployed--when information about her education, work history, and health meet the provisions of state law addressing voluntary unemployment?

2. The trial court erred in failing to impute income to the Respondent, when she has a work history, education, health that meet state law definitions regarding voluntary unemployment.

May a trial court exclude consideration of business expenses on the incorrect premise that the matter was not raised at the initial September 14 2012 hearing, even though Appellant did raise the issue at that proceeding? May the trial court exclude consideration of business expenses on the premise that Appellant made intentionally bad investments to reduce his income for purposes of child support calculation, even though no evidence was offered, nor allegation to such effect made, by the Respondent--but only by the Court itself?

3. The trial court erred in excluding consideration of business expenses by the Appellant in worksheets calculating net income.

May the trial court accept as monthly expenses costs which were one-time and non-recurring? May the trial court accept health care expenses that were accrued after the date of the original trial, when the court has directed that only those costs that had been accrued before the date of trial could be considered? May the trial court justify the choice to accept those costs because the Appellant did not initially identify the shortcoming at a proceeding for which six days notice was required, but only three days notice provided?

4. The trial court erred in allowing the Respondent to claim credit for health care expenses of \$115.28.

When the court issues directions that the financial information upon which child support will be based is to address materials which could have been available at the time and date of trial, must the court adhere to such directions? When state law requires financial information from the two years prior to the proceeding, may a party instead submit information regarding the year of the proceeding and the year following? May the court accept such information as the basis of its child support ruling?

5. The trial court erred in accepting worksheets which referred to financial information from the 2009 year, which could not have been available until the end of that year--after the end of the trial.

May the court base its proceedings on the date of an original proceeding in September 2009, and establish a start date for the effectiveness of payments on a date six months earlier, effectively providing for a retroactive start date?

6. The trial court erred in establishing a starting date of April 2009 for the effective period of the Order of Child Support, when the original trial did not occur until September 2009, and the original decision occurred in November 2009.

STATEMENT OF THE CASE

The court ordered that only that information which would have been available at the time of trial would be considered in this proceeding. (VRP 8/3/12 p13-14) Materials received from Respondent were 2009 and 2010 1040A tax forms, (2009 1040A was signed by Respondent on October 10 2011), 2009 unemployment forms, 2009/2010 medical expenditures (sealed Financial Source Documents, CP 681-707). Materials did not include any proposed court order; they also did not include any reference to the business owned by Respondent. Worksheets included an effective date of April 2009 (sealed Financial Source Documents, CP 681-707). On September 14, 2012, each side presented arguments; among other things, Appellant noted that Respondent's worksheet numbers indicated business income from a building he owned--but since has lost to foreclosure--but that her numbers did not show any amount for mortgage, sewer, water, electrical, gas, repairs or other expenses (Washington State Child Support Schedule Worksheets 9/11/12 CP 730-735). Court

inquired as to whether Respondent had allowed deviation for overnights for Petitioner in her paperwork (VRP 9/14/12 p51). On September 24, 2012, Petitioner filed a letter supporting a deviation for overnights, and noting that Respondent's paperwork was replete with errors, soliciting the court to use his worksheets, which were attached (Letter in Response, Child Support Worksheet, CP 736-744). That letter noted that the Respondent's worksheets used 2009 tax and financial information; but that such information could not have been available till the end of 2009, rather than the date of trial in September 2009; for the original trial, financial materials had been submitted in July 2009. On October 8, 2012, Court ruled regarding income amounts for the Petitioner and Respondent, that each party pays their own day care, that income from the Petitioner's building is not to be considered because it's not making money, that respondent is to revise an order that she submitted to the court (but not to the Petitioner) reflecting those changes (Amended Findings of Fact and Conclusions of Law CP 103-109). On January 4, 2013 Court filed an order that continued to reflect the mother's day care expenses, though Petitioner's income from the building had been removed (Order of Child Support, CP 413-428). On February 14, 2013 Petitioner filed supplemental financial information, including

materials reflecting the income and expenses of the building (Sealed Financial Source Documents, CP 748-826). On February 20, 2013, Respondent filed an affidavit, which included confirmation that she receives monthly income of up to \$300/mo from her dance business (Responsive Declaration in Opposition to Motion for Reconsideration CP 827-829). Her worksheets, however, were never updated to reflect this income. On February 22, the Court approved the petitioner's motion for reconsideration, in part, as regards the inclusion of day care expenses, and denied remaining considerations (Petitioner's Motion for Reconsideration CP 470). Court awarded attorney's fees of \$500 to Respondent's counsel. On April 22 the court filed a decision indicating that, if the Petitioner could demonstrate that he was, or is, paying a portion of the medical costs for the child, then he should get credit in the worksheet calculation for that which he is paying (Order on Presentation CP 494-495). On May 10, petitioner filed a motion confirming expenditures of \$487 in 2013 for dental expenses (Affidavit of Payment Record re Health Expenses CP 497-500). Court denied motion, and signed an order of support with worksheets.

ARGUMENT

1. The trial court erred in accepting incomplete worksheets. The Respondent owns a business, and did not include reference to revenues and expenses of that business in her worksheets.

On September 14, 2012, the parties presented their respective “closing arguments” including financial information (VRP 09/14/13). Financial information was required to reflect that which would have existed at the time of the trial (VRP 8/3/12 p13-14). Even though the court constrained the ability of the Appellant to challenge the financial assertions of the Respondent by refusing to allow objections (VRP 9/14/12 p 52) Appellant noted that Respondent owns a business at the September 14 2012 proceeding (VRP 9/14/12 p 48, 63). Respondent’s worksheet did not acknowledge existence of the business. (Child Support Worksheets CP 730-735) Following the court’s ruling and presentation of an order and worksheets on January 4, 2013, Appellant sought reconsideration, and at the hearing February 22, 2013, made the case that Respondent’s materials did not disclose certain income (VRP 2/22/13/ p8-10). Respondent has acknowledged making up to \$300 monthly from the business (Responsive Declaration in Opposition to Motion for Reconsideration CP 827-829), but her worksheet did not include any acknowledgement of the existence of the business. Appellant presented evidence to the court of income from the business

(Internet Pages, CP 830-860). The court ruled that because the Appellant had not raised the issue at the September 14 2012 proceeding, and because it did not have complete information upon which to base a determination of net income, that no such entry would be required on the worksheet (VRP 2/22/13 p21). State law is clear, however:

RCW 26.19.071--All income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent. RCW 26.19.035--The court shall not accept incomplete worksheets.

The court is required to insist upon disclosure of all sources of income, according to 26.19.071. Failure to do so is an abuse of discretion, and should be overturned. Respondent provided worksheets and financial information on September 11 2012 (Sealed Financial Source Document CP 708-729; Child Support Worksheets CP 730-735), for a September 14, 2012 hearing--these materials were filed with the clerk, and working copies provided to the court on that date; court rules require that materials must be filed at least a week before the hearing:

PCLR 7 Motions: Judges and Commissioners (a)(3)(A) ...The Note for Motion Docket, motion and supporting documents shall be filed with the clerk and served on the opposing party no later than the close of business on the sixth court day before the day set for the hearing.

These procedural rules are intended to provide opposing parties the opportunity to examine materials and develop responses. Failure

to observe time frames deprives the opposing party of this opportunity, and builds in the likelihood of surprise, contrary to the purposes of procedural protections; this time frame also deprived the Appellant of the opportunity to submit opposing papers, which are to be filed and served two court days before the date the motion is scheduled for hearing (PCLR 7(a)(5)) Given that short time, Appellant did not have the opportunity to discover the shortcomings of the material provided. Respondent should not be rewarded for preparing incomplete and deceptive worksheets and failing to disclose financial information, filing them three days before the proceeding, and then claiming that the Appellant did not discover the non-disclosure at the proceeding three days subsequent (VRP 2/22/13 p17). To fail to govern the courtroom according to these requirements is an abuse of discretion; arguments made under such premise should not be allowed to prevail.

2. The trial court erred in failing to impute income to the Respondent, when she has a work history, education, health that meet state law definitions regarding voluntary unemployment.

Respondent claimed monthly income of \$2065 for 2009 (Child Support Worksheets CP 730-735) . Respondent supplied information that demonstrated income of \$40,332 in 2010 (Sealed

Financial Source Document--US Individual Income Tax Return 2010 CP 708-729); earlier information, submitted in 2009, demonstrated income of \$42,264 in 2008 (Sealed Financial Source Document 2009 --Spacelabs, Charles River, unemployment CP 681-707 Filed Sept 11 2012 as "Working Copies Provided" for 9/14/12 hearing). This income does not include revenue from the business, which was undisclosed on worksheets. When Appellant asserted that the worksheets should reflect imputed income at the reconsideration hearing, the court ruled that that information was not presented at the time of the original hearing, and wouldn't be allowed (VRP 2/22/13 P 21-22). However, state law is clear:

RCW 26.19.071(b) "the court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed based upon that parent's work history, education, health, and age, or any other relevant factors."

The respondent's education, age, health all indicate an ability to work. Her salary in 2008 of \$42,264 and \$40,332 in 2010, meet the standard of voluntary unemployment, by the state law definition. The Respondent provided tax returns for 2009--which could not have been prepared before September 2009, as required by the Court--and 2010, when the law requires tax information for the two years previous--2007 and 2008 (RCW 26.19.071). Further, Appellant presented evidence that Respondent had testified under

oath in 2009 that her income potential was between \$60,000 and \$110,000 (VRP 2/22/13 p 13-14). The court's exercise of discretion to simply not address the imputation of income is inconsistent with the law and is an abuse of discretion. As noted above, the failure to raise the issue at the September 14, 2013 hearing should not be a defense, in that the filing and serving of materials was contrary to the procedural requirements of PCLR 7 (a)(3)(A), requiring at least six days prior service of materials; respondent provided three.

3. The trial court erred in excluding consideration of business expenses by the Appellant in worksheets calculating net income.

Appellant owned a small apartment building, for which he paid a mortgage of \$8250/mo, with expenses, including taxes, water, sewer, gas, electricity, and insurance, total expenses amounted to \$10,894/mo.(Background Papers, Filed February 22 (actually 2/14) 2102 CP 433-463) This was extensively documented by Appellant. Rental income from the building was \$8069 monthly.*id* The extreme expenses of the trial, beginning in 2007, had resulted in enormous legal expenses for the Appellant, resulting in problematic credit history and an expensive mortgage rate. At the September 14 2012 proceeding, Respondent claimed Appellant's income to include revenue from the rental stream of the building,

while excluding mention of expenses. Appellant asserted that building expenses, including utilities, maintenance and taxes significantly outweighed income.(VRP 9/14/12 p61-62) At the reconsideration proceeding on February 22, 2013, Appellant presented detailed information regarding his finances, including expenses of operating the building including utilities, taxes and insurance (VRP 2/22/13 p6-8). The court alleged, on its own initiative, that Appellant had made purposely bad business investments in order to minimize reported income for purposes of child support calculations.

“A person cannot use a residential--excuse me, a business investment interest to somehow deflate his income and, therefore, the ability of the child to have support from its parent simply because somebody is making an intentionally bad business decision in having a loss rental in regards to a private business interest.” (VRP 2/22/13 p 22-23)

This accusation had not been alleged by the Respondent or Respondent's attorney, or any supporting evidence provided, but was initiated by the court. However, RCW 26.19.071 indicates “(5) The following expenses shall be disclosed and deducted from gross monthly income to calculate net monthly income:...(h) Normal business expenses...” Respondent asserted incorrectly that Appellant had not raised the issue at the September 14 2012 proceeding (VRP 2/22/13 p 17); the court agreed, and ruled that the evidence was to be excluded (VRP 2/22/13 p 23). Appellant

had raised the issue at the 9/14/12 proceeding (VRP 9/14/12 p61-62). Trial court's decision to exclude consideration of business income is contrary to the law, and based on incorrect premise; it therefore constitutes an abuse of discretion, and should be overturned.

4. The trial court erred in allowing the Respondent to claim credit for health care expenses of \$115.28.

Respondent filed income and expenses information on 9/11/12 for the 9/14/12 proceeding, and made information available to Appellant on the same day (see LINX 9/11/12 filing entry); rules require that information be provided six days in advance (PCLR (7)(a)(3)). This is a procedural violation that left the Appellant little time to examine information closely. Information included a bill from Pediatrics NW, in the amount of \$115.28. (Sealed Financial Source Documents 2009, Filed Sept 11 2012 CP 681-707 Pediatrics NW bill). The bill date is 7/04/10, and could not have been available for a September 2009 trial. The Court required that only information available at the time and date of trial would be allowed. (VRP 8/3/12 p13-14) The \$115.28 is composed of three one-time events: an 4/16/2010 visit billed at \$86.14; an 11/07/2009 visit billed at \$16.96; and an 8/26/2009 visit, billed at \$10.58. Of these, only the 8/26/2009 visit occurred before the

September 2009 trial. (Sealed Financial Source Documents 2009, Filed Sept 11 2012 CP 681-707 Pediatrics NW bill) Together, these visits total \$115.28, accumulated over the period between 8/26/2009 and 4/6/2010. These are not monthly expenses, but separate one-time expenses. Respondent's worksheet includes an entry of (Line 10.b) Uninsured Monthly Health Care Expenses--\$115.28 (Washington State Child Support Schedule Worksheets filed Sept 11, 2012 CP 730-735). The only portion of this expense that should be allowed is the \$10.58 accrued before the September 2012 trial, divided over 12 months. This information was provided three days before the September 14 2012 proceeding, in violation of court rules; Appellant did not have the opportunity to catch this shortcoming, along with the many other errors in the worksheet, in the short time before the proceeding. This is clearly in error, and should be overturned.

5. The trial court erred in accepting worksheets which referred to financial information from the 2009 year, which could not have been available until the end of that year--after the end of the trial.

The trial court indicated that financial information was required to reflect that which would have existed at the time and of the trial.

State law requires tax returns for the two previous years:

“RCW 26.19.071 Standards for Determination of Income: Tax returns for the preceding two years and current paystubs shall be provided to verify income and deductions. Other sufficient

verification shall be required for income and deductions which do not appear on tax returns or paystubs.”

On 9/11/12, Respondent submitted tax returns for 2009 and 2010, and based the worksheet on the 2009 tax return (Sealed Financial Source Document 2009 Filed 9/11/2012 CP 681-707); (Sealed Financial Source Document 2010 Filed 9/11/2012 CP 708-729). Respondent’s income was contingent, and could well have changed in the latter part of 2009, were she able to secure employment; income information for full-year 2009 could not have been relied upon in September 2009. On September 24, 2012, Appellant submitted materials to the court that, among other things, indicated that 2008 tax returns should be used, in that 2009 financial information could not have been available for the full year 2009 in September 2009 (Letter in Response, Child Support Worksheet, filed Sept. 24 2012 CP 736-744). The court accepted Respondent’s worksheets, based upon 2009 financial information, and never acted upon Appellant’s concern raised in the September 24 2012 letter. To accept tax return information from 2009 when clear court direction was to use information available on the date and time of the original proceeding, and when state law requires submittal of the two previous years information, is an abuse of discretion and should be reversed.

6. The trial court erred in establishing a starting date of April 2009 for the effective period of the Order of Child Support, when the original trial did not occur until September 2009, and the original decision occurred in November 2009.

The original trial dates of this proceeding were September 14-17 2009. The court rendered its opinion on November 19, 2009. In the January 4 2013 Order of Child Support (CP 413-428), there is an entry for item 3.9: Starting Date of April 2009. Appellant sought explanation for this entry, and was told that it was the intent of the Appellate Court; trial court ruled that it would adhere to the April 2009 date (VRP 5/10/13 p 16-17). Throughout the September 14 2012 proceeding, the court made clear that it would not allow materials that preceded the date of the trial; by this ruling the court actually made its decision retroactive to a date that preceded the trial date by half a year. This outcome is contrary to the facts of the case and previous rulings, and is an abuse of discretion which the Appellate Court should overturn.

CONCLUSION

Appellant requests that the Appellate Court consider and review the financial issues as well as procedural issues described above, and correct the rulings of the trial court considering both substantive issues, procedural requirements, and legal mandates. Appellant requests that the Court overturn the trial court's ruling

and direct, in specific, directive, clear and unambiguous terms, the trial court to revise the child support ruling, with proposed worksheets presented by both parties, based on the Appellate Court's decision.

Clyde Red
Nov 14 2013

NOV 14 2013
STATE OF WASHINGTON
CLERK OF COURT

COURT OF APPEALS DIVISION II OF THE STATE OF WASHINGTON

Clyde Reed, Appellant

v

Catherina Brown, respondent

)
)
)
)

No. 44151-9-II
AFFADAVIT OF SERVICE

COMES NOW the undersigned under penalty of perjury under the laws of the State of Washington, declare as follows:

That on the 14th day of November, 2013, I served upon Catherina Brown, the following documents in the above-referenced case:

- 1. Supplemental Brief of Appellant November 14 2013
- 2. Motion for Ruling regarding Unavailability

SIGNED AND DATED THIS 14th day of November 2013 AT SEATTLE, WA.



CLYDE REED, Pro Se