

2016

**Andrew Veysey, Petitioner/Appellee vs. Alexis Nelson,
Respondent/Appellant**

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

ANDREW VEYSEY,
Petitioner/Appellee

vs.

ALEXIS NELSON,
Respondent/Appellant

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) **BRIEF OF THE APPELLEE**
)
)

) Court of Appeals Case No 20150609
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APPEAL FROM THIRD DISTRICT COURT, SALT LAKE COUNTY,
JUDGE BARRY LAWRENCE

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generally bind this court should the case return on appeal after remand.’ . . . The Utah Supreme Court has stated that, among other things, ‘[t]he doctrine was developed . . . “to avoid the delays and difficulties involved in repetitious contentions and reconsideration of rulings on matters previously decided in the same case.”’).

2. Did the Court act contrary to Utah law in applying laches as a defense to court-ordered child support?

Determinative Law: U.C.A. § 78B-12-214 (3) (“In addition to any other sanctions provided by the court, a parent incurring child care expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if the parent incurring the expenses fails to comply with Subsection (2)(b)"); *Veysey I*, 2014 UT App at ¶¶ 16, 18 (concluding laches is permissible in this case); *Borland By and Through Utah State Dept. of Social Services v. Chandler*, 733 P.2d 144, 146 (Utah 1987) (“W]e conclude that laches may apply to a statutory action . . . it is clear that under appropriate circumstances, laches may bar an action for paternity [support].”); *Burrow v. Vrontikis*, 788 P.2d 1046, 1048 (UT Ct. App. 1990) (Mother’s failure to make any request or take any legal action for child support for seven years constituted unreasonable delay, and the Doctrine of Laches applied to preclude recovery).

3. Did the Court violate the separation of powers doctrine by applying laches to shorten, by nearly two-thirds, the applicable statute of limitation of a case at law?

Determinative Law: U.C.A. § 78B-12-214 (3) (“In addition to any other sanctions provided by the court, a parent incurring child care expenses may be denied the right to

receive credit for the expenses or to recover the other parent's share of the expenses if the parent incurring the expenses fails to comply with Subsection (2)(b)"); *Veysey I*, 2014 UT App at ¶¶ 16, 18 (concluding laches is permissible in this case); *see also Insight Assets, Inc. v. Farias*, 321 P.3d 1021, 1025-26, 1026 n.24 (Utah 2013) (rule "that laches cannot be a defense before the statutory limitation has expired" is "not absolute"; the "doctrine of laches may apply in equity, whether or not a statute of limitation also applies and whether or not an applicable statute of limitation has been satisfied."); *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 134 S.Ct. 1962, 1974 (2014) (describing laches as "gap-filling, not legislation-overriding"); *SCA Hygiene Products Aktiebolag v. First Quality Baby Prod. LLC*, 807 F.3d 1311, 1315 (Fed. Cir. 2015) (en banc) ("laches and a time limitation on the recovery of damages can coexist . . . We must respect that statutory law."); *Jacobsen v. Deseret Book Co.*, 287 F.3d 936, 951 (10th Cir. 2002) ("it is possible, in rare cases, that a statute of limitations can be cut short by the doctrine of laches").

4. Did the Court act contrary to Utah law in finding unreasonable delay, despite also finding that Nelson brought the action well within the applicable statutory of limitations?

Determinative Law: *See* U.C.A. § 78B-12-214 (3) as well as the precedents cited in connection with issues 1-3 above, which apply to require a "no" to this issue question raised by Appellant.

5. Did the Court act contrary to Utah law by rendering a finding of prejudice with respect to expenses incurred prior to an arbitrary date of April 2005?

Determinative Law: *Veysey I*, 2014 UT App at ¶ 6 (trial court is accorded “deference” in its “application of the law to the facts” in relation to laches and discretionary equitable application of U.C.A. § 78B-12-214 (3) so long as such is “supported by adequate factual findings”); *Anderson v. Doms*, 1999 UT App 207, ¶ 8 (findings in support of laches will not be overturned unless “clearly erroneous”).

STATEMENT OF THE CASE

Appellee Andrew Veysey (“Appellee”) incorporates herein the contents of Appellant Alexis Nelson’s Statement of the Case, see Appellant Brief (“A.Br.”) at 6-8 and supplements with the following additional statement.

Pursuant to the Decree of Divorce entered on September 9, 1999, Appellee was ordered to pay one half of all reasonable monthly daycare expenses actually paid by Appellant as a result of work or educational training. (R. 79). In April of 2000, when Appellant filed an Order to Show Cause for unpaid child care expenses, the parties were ordered to modify the Decree of Divorce to include language requiring Appellant to provide Appellee with verification of payment of child care expenses within 30 days. (R. 384).

In early 2013, Appellant provided Appellee for the first time with documentation of expenses incurred when the parties’ minor children were enrolled at the Challenger School, which enrollment occurred between 2002 and 2006. No such verification or request for reimbursement had ever been made prior to this exchange. In March 2013, Appellant filed an Order to Show Cause requesting reimbursement of expenses allegedly

incurred between 2002 and 2006 when the parties' minor children attended the Challenger School. (R. 316)

The parties attended a hearing before Commissioner Michelle Blomquist on April 1, 2013, wherein the Commissioner recommended that Appellee reimburse for one half of preschool related expenses and extended care costs incurred from April 1, 2005, forward. (R. 556-57). Appellant then filed an Objection to the Commissioner's Recommendation on April 12, 2013, and filed an Amended Objection to the Commissioner's Recommendation on April 15, 2013. Following an evidentiary hearing on June 20, 2013, District Judge L.A. Dever issued a Minute Entry on July 12, 2013, wherein the District Court found the Commissioner's recommendation was correct and simultaneously signed a drafted Order on Hearing outlining the detailed findings and order of the Court. (R. 577-79).

Appellant filed an appeal to this Utah Court of Appeals ("the Court" or "this Court") on August 2, 2013, raising multiple issues, such as whether there was an eight (8) year statute of limitations on child care costs, whether the principle of laches could be appropriately applied when determining the propriety of reimbursing child care costs, and whether the District Court was required to issue a more lengthy Minute Entry ruling in the wake of the evidentiary hearing. This Court then decided the matter through a written opinion dated November 14, 2014, found at *Veysey v. Veysey*, 2014 UT App 264 ("*Veysey I*"). In *Veysey I*, this Court ruled that child care was in the nature of child support and therefore the applicable statute of limitations is four years after the youngest child reaches

the age of majority. *Veysey I*, 2014 UT App at ¶ 15. The Court also ruled Appellee “is not responsible for the cost of regular half-day kindergarten tuition” but “any extra tuition paid for full-day kindergarten may qualify as extended-care expenses.” *Id.* at ¶ 20.

After identifying the extremely long statute of limitations period, this Court also found the relevant statutory scheme also permits the defense of laches and other judicial discretion to deny claims for reimbursement if statutory verification requirements were not timely observed:

“To successfully assert a laches defense, a defendant must establish both that the plaintiff unreasonably delayed in bringing an action and that the defendant was prejudiced by that delay.” *Borland v. Chandler*, 733 P.2d 144, 147 (Utah 1987). “The length of time that constitutes a lack of diligence depend[s] on the circumstances of each case, because the propriety of refusing a claim is equally predicated upon the gravity of the prejudice suffered ... and the length of delay.” This issue is therefore highly fact-dependent, requiring consideration of “the relative harm caused by the petitioner’s delay, the relative harm to the petitioner, and whether or not the respondent acted in good faith.” . . .

. . . .
[A]dditional findings are necessary to determine which of Mother’s expenses may be properly reimbursed. If supported by adequate findings, a determination that some portion of Mother’s claims are barred by laches would not necessarily be inappropriate.[] Alternatively, based on adequate findings, the district court may exercise its discretion to deny Mother’s claims if it determines that she failed to comply with Utah Code section 78B–12–214(2)(b), which outlines the verification requirements a parent must comply with to obtain reimbursement for daycare expenses,[] *see* Utah Code Ann. § 78B–12–214(2)–(3) (LexisNexis 2012), or with the requirements of the parties’ divorce decree, *see supra* ¶ 2 & note 1. Or the district court may conclude that all of Mother’s claims are reimbursable because they were brought within the statute of limitations.

Veysey I, 2014 UT App at ¶¶ 16, 18.

Judge Dever retired while this case was on appeal, so the entirety of the evidence

was re-presented on remand to District Court Judge Barry Lawrence on June 16, 2015. The District Court took the case under advisement, issuing an oral ruling by telephone conference on June 19, 2015. The District Court followed with written Findings of Fact and Conclusions of Law (R. 964 (¶¶ 1, 3-7, 9-18, underlining omitted and emphasis added)) issued on July 16, 2015, which repeatedly cited *Veysey I* and explained the District Court's factual findings in relation to application of the criteria required by *Veysey I*:

□ The Court recognizes that variable daycare expenses constitute child support, and that the statute of limitations governing enforcement of child support applies to Respondent's claims for reimbursement. *Veysey v. Veysey*, 2014 UT App 264, ¶ 15.

....

□ Respondent's claims for reimbursement prior to April 2005 . . . are barred by laches.

□ Under Utah case law, a laches analysis requires a determination of: (1) whether Respondent delayed unreasonably; and (2) whether Petitioner was prejudiced by that delay. . . .

□ With respect to the element of unreasonable delay . . . Respondent waited for over a decade to seek reimbursement of the requested expenses. And, she failed to adequately explain the reasons for the delay and failed to explain her lack of diligence in pursuing the claims . . . The Court was not persuaded that her conduct was justified, reasonable, or diligent.

□ The Court found Utah Code Ann. § 78B-12-214 . . . persuasive with respect to the reasonableness of Respondent's actions.

□ Under this statute, a party needs to provide written notification of the costs and identity of the provider, and notify the other party if anything changes within 30 days of the change. Essentially, this statute establishes a policy of keeping the other party informed when you are going to seek costs.

....

□ Petitioner was aware that the children were enrolled in Challenger School and incurring costs there, but based on the record, there are questions as to *whether he knew specifically the amount of costs, whether the costs were significantly more than the [previous] University of Utah costs, and what his obligations were with respect to those costs.*

□ . . . *There has never been anything in writing given to Petitioner other than . . . [a] handbook to support Respondent's claims. And, there*

was nothing presented to the Court indicating that any increased child care expense was ever communicated to Petitioner. . . .

[] *From an email presented to the Court by Petitioner, it appears that Respondent never truly intended to pursue her claims, but did so as a sort of retribution against Petitioner. That inference is supported by the fact that there was nothing done by Respondent from the time the expenses were incurred until the date of the email that indicated an intent to collect these costs from Petitioner.*

[] As a result, the Court finds that Respondent was not reasonable in her delay.

[] With respect to prejudice, the Court finds that by failing to properly raise the issue at the time, Petitioner was prevented from having an opportunity to contest the amount owed. If, for example, costs of Challenger School were significantly more than those of the University of Utah, that should have been brought to Petitioner's attention so that he could have challenged that at the time, and perhaps cause the parties to agree to a less expensive provider.

[] The passage of time has also made it difficult to demonstrate the amount owed. For example, *Respondent's payment summary entered into evidence only dealt with credit card payments made by Petitioner. If there were cash payments or some equitable adjustments that needed to be made, those would not have been able to be made because of the passage of time.* . . . Moreover, the passage of time has contributed to *Respondent's inability to properly and reasonably support the amount of her claims, as demonstrated by the confusion surrounding her explanation of her methodology in computing the amount owed.*

[] As a result, the Court finds that Petitioner was prejudiced by the delay sufficient to support a finding of laches.

[] . . . [T]he April, 2005 to June, 2006 costs *Petitioner does not strenuously object to those costs* Accordingly, laches does not bar those claims.

[] Petitioner is not responsible for the cost of regular half-day kindergarten, but is responsible for any extra tuition paid for full-day kindergarten as an extended care expense. *See Veysey*, 2014 UT App 264 at ¶ 20.

[] Based upon the Respondent's testimony, the amount owed for the time period from April 2005 – June 2006 is \$875.00. This amount is a reasonable approximation of the amount owed, and is consistent with the Court of Appeals' mandate regarding the calculation of Petitioner's portion of Kindergarten expenses.

Appellant filed a Notice of Appeal on July 17, 2015, and then subsequently filed a Motion to Alter or Amend Under Rule 59(E) on August 15, 2015, claiming that laches cannot equitably deny reimbursement where a statute of limitations affords the right to reimbursement. The Court ultimately declined the Appellant's Motion on September 22, 2015, stating that the District Court made findings related to the elements of laches "based on the Court of Appeals direction", therefore there is no error of law. *Ruling on Motion to Amend, at 2.* This present appeal ensued.

STATEMENT OF THE FACTS

Appellee incorporates herein the documents, quotations, and quotations of legal authority in Appellant's Brief, including but not limited to A.Br. at 6-15, 20-24, and Exhibits A and C, as well as factual recitations in the previous Statement of the Case section. Appellee provides the following additional supplementary facts.

With regard to the evidentiary hearing before Judge Barry Lawrence of the Third District Court on June 16, 2015, both parties testified and the court received evidence nearly identical to that which was presented to the court upon initial hearing in 2013. The Appellant was unable to prove that she had ever verified with the Appellee the tuition expenses for the children's Challenger School programs, or that she had requested reimbursement prior to the date of filing the Order to Show Cause in 2013. Moreover, Appellant's correspondence with Appellee indicated that she never intended to litigate the issue or request reimbursement on the tuition costs until after Appellee had obtained credit for back medical insurance premiums during the course of modification litigation and

settlement in 2012. (R. 965-955) Appellee testified that he had never known the Appellant was paying the Challenger School tuition costs, had never been contemporaneously asked to pay for it, and would not have been able to contemporaneously afford the cost of the school tuition. (Hearing Transcript, June 16, 2015, Pg 45-46, 49-50; R. 965-66). He further testified that he would have necessarily litigated the issue of child care reimbursement contemporaneous to the kids' Challenger School enrollment, had he been given the opportunity through timely documentation and requests, because he was – and is – unable to afford those costs, which were a significant increase from the prior child care arrangement. (Hearing Transcript, Pg 45-46). Appellant's failure to provide him timely verification of the expenses also prejudiced him from being able to object to the financially crippling child care cost liability a decade later, in addition to preventing him from any ability to contest the reasonableness of the expense in the first place. (R. 566). Moreover, Appellee's ability to claim one of the marital children on taxes is contingent on his being current on child-related costs; as such, Appellant's failure to seek reimbursement contemporaneous to the expenditures could have the effect of depriving him years of tax exemptions upon entry of the judgment, which deprivation would have a very real and articulable financial prejudice moving forward. (Hearing Transcript, June 16, 2015, Pg 50-51).

To date, three finders of fact (one commissioner and two judges) have reviewed a nearly identical set of facts regarding the Appellant's claims, and all three finders of fact have reached the same conclusion: that Appellant's claims should be barred by laches.

When the court was given the opportunity to review the evidence at hand, personally observe testimony of the parties, and determine the equity and fairness of the reimbursement claims, Appellant has failed to meet her burden of proof each of the three opportunities. This attempt to yet again appeal what three finders of fact have already ascertained, and on which the Court of Appeals has actually already ruled, is merely Appellant attempting to reach a result which is unsupported by fact or law.

SUMMARY OF THE ARGUMENT

Appellant remains unhappy with this Court's decision in *Veysey I*, in which this Court already decided the issues Appellant now seeks to revisit in this second appeal. However, the District Court carefully followed what this Court instructed in *Veysey I*, and Appellant is simply making an impermissible attempt to circumvent the Law of the Case Doctrine.

Even if, *arguendo*, this Court was inclined to consider the merits of Appellant's re-challenge to laches, and ignore its own governing *Veysey I* decision, Utah statutory provisions and precedents long ago permitted laches as a defense to various statutory actions, including actions for child support. Appellant's assertion that the District Court violated Utah law by applying laches to court-ordered child support is simply inaccurate, with or without application of *Veysey I*. Furthermore, as Appellant's own line of precedents illustrates along with other additional authorities cited by Appellee, application of laches as a defense to various statutory actions such as the Utah statutory scheme for child support does not violate the Separation of Powers Doctrine. The availability of laches

in relation to a statute is assessed on a case-by-case basis to see if laches is compatible with what the Legislature intended, based upon such considerations as the wording and evident intent of the statute, as well as legislative history, canons for construing statutes in relation to common law defenses, the policies being statutorily advanced by the Legislature, and various other considerations. The judiciary thereby effectuates the scheme chosen by Legislature, as opposed to judicially defying the Legislature.

In the present instance, the Legislature included a unique statutory provision showing an intent for the judiciary to have discretionary power to limit recovery for child expenses through a variety of equitable doctrines and legal sanctions in situations where the statute of limitations had not yet expired but it would be unfair to compel a parent to pay a belated demand for reimbursement. “In addition to any other sanctions provided by the court, a parent incurring child care expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if the parent incurring the expenses fails to comply with Subsection (2)(b)”. U.C.A. § 78B-12-214 (3). In the present instance, the District Court properly applied Utah law and the factors identified in *Veysey I* to find that Appellant had acted with unreasonable delay. With regard to the cut-off of April 2005, there was nothing arbitrary or inappropriate about selection of that date, since Appellee made it clear to the Court that Appellee was waiving any challenge to recovery of assessments for post-April 2005 expenses. That decision was made in light of the financial burden of ongoing litigation compared to the low judgment assessed against the Appellee, as opposed to the Appellee agreeing with the legal basis of the ruling.

Each of the four issues asserted by Appellant are without procedural or substantive merit.

ARGUMENT

Through her issues I through IV, Appellant argues that the District Court acted contrary to Utah law in applying laches to court-order child support; the District Court violated the separation of powers doctrine by applying laches to “shorten, by nearly two thirds, the applicable statute of limitations”; the District Court acted contrary to Utah law in finding unreasonable delay, despite also finding that Appellant brought the action within the applicable statute of limitations; and the District Court acted contrary to Utah law by rendering a finding or prejudice with respect to expenses incurred prior to the “arbitrary” date of April 2005. A.Br. 1, 3-5, 15, 18-20. Appellant’s challenges are without merit, due to the reasons and authorities below.

I. LAW OF THE CASE PREVENTS APPELLANT’S EFFORTS TO REVERSE THIS COURT’S PREVIOUS *VEYSEY I* RULING

Appellant disagreed with this Court’s decision in *Veysey I* and has continued to urge that this Court’s opinion be disregarded or overruled on remand and on her subsequent appeal based on the same issues. Since this Court’s previous holding dealt with laches and the proper criteria for evaluating a laches defense on remand, and since the District Court on remand carefully conformed its analysis to the principles enunciated by this Court in its

original opinion, Appellant's criticisms of the District Court are simply a disguised request that this Court reverse its own earlier precedential opinion. However, as Appellant should know from her own cited precedent, A.Br. 6, the Law of the Case Doctrine forbids precisely what she is now requesting.

“Under the law of the case doctrine, issues resolved by this court on appeal bind the trial court on remand, and generally bind this court should the case return on appeal after remand.’ . . . The Utah Supreme Court has stated that, among other things, ‘[t]he doctrine was developed . . . “to avoid the delays and difficulties involved in repetitious contentions and reconsideration of rulings on matters previously decided in the same case.”’” *Anderson v. Doms*, 2003 UT App 241 ¶ 29 (also adding that “under the law of the case doctrine, we decline to consider Anderson's other arguments which have all been decided by former appeals in this case”). Appellant has not (and cannot) demonstrate any exception to this general rule, as this Court's original ruling was both correct and just, and no exception applies. *See id at* ¶ 29 n.8.

The Law of the Case Doctrine is an independent and sufficient basis for this Court to summarily dismiss Appellant's most recent appeal as an impermissible duplication of what has already been resolved by *Veysey I*. Respectfully, that is precisely what this Court should do.¹

¹ Respectfully, if the Court was somehow to reject portions of its own previous opinion in disregard of the Law of the Case Doctrine, the Court in all fairness should then grant leave for Appellee to file a cross-appeal challenging all portions of *Veysey I* with which Appellee

II. THIS COURT'S PREVIOUS *VEYSEY I* RULING WAS CORRECT, AS WAS THE DISTRICT COURT'S INVOCATION OF LACHES PURSUANT TO *VEYSEY I*

Even if this Court was inclined to (needlessly and erroneously) ignore Law of the Case Doctrine and reconsider its *Veysey I* holding that laches is a viable defense in this litigation, such an exercise would only serve to reaffirm that this Court's earlier ruling (and the District Court's implementation of the same) was substantively correct.

A. UTAH COURTS HAVE LONG PERMITTED LACHES AS A DEFENSE TO VARIOUS STATUTORY ACTIONS, INCLUDING ACTIONS FOR CHILD SUPPORT

Notwithstanding Appellant's assertions to the contrary, A.Br. 15-20, there is nothing novel about the existence or use of a laches defense in relation to claims for paternal child support, or to statutory legal claims, or to claims for monetary damages. Well before this Court's *Veysey I* decision earlier resolving this present litigation, both the Utah Supreme Court and this Court had already previously explained that laches is a permissible defense to legal actions for child support and other forms of paternal support. *See, e.g., Borland By and Through Utah State Dept. of Social Services v. Chandler*, 733 P.2d 144, 146 (Utah

disagreed. Appellee has not filed such a cross-appeal because Appellee would not want to share in Appellee's frivolous violation of the Law of the Case Doctrine along with Appellee.

1987) (“W]e conclude that laches may apply to a statutory action The principle relied upon by the plaintiffs here has its roots in the common law distinction between law and equity. At common law, an equitable defense could not be raised to a legal action, and because a statutory action was legal in nature, equitable defenses would not apply. *See* 27 Am.Jur.2d Equity § 154 (1966). . . . However, Utah long ago abolished any formal distinction between law and equity. *See* Utah R.Civ.P. 2. It is well established that equitable defenses may be applied in actions at law and that principles of equity apply wherever necessary to prevent injustice. . . . Therefore, it is clear that under appropriate circumstances, laches may bar an action for paternity [support].”); *Burrow v. Vrontikis*, 788 P.2d 1046, 1048 (UT Ct. App. 1990) (Mother’s failure to make any request or take any legal action for child support over the course of seven years constituted unreasonable delay, and the Doctrine of Laches applied to preclude recovery). *Veysey I* reaffirmed the availability of laches yet again.

In an attempt to circumvent this reality, Appellant relies heavily on *DOIT, Inc. v. Touche, Ross & Co.*, 926 P.2d 835 (Utah 1996),² for the proposition that *Veysey I* and other Utah cases are in error and that laches cannot be a defense prior to expiration of an

² Appellant also relies upon *McReynolds v. McReynolds*, 787 P.2d 530, 532 (Ut. Ct. App. 1990), which enunciates the unremarkable proposition that a wife’s interference with, or prevention of, a husband’s exercise of visitation rights does not permit trial court to extinguish past due child support. A.Br. 2, 17. Impermissible attempts to link child visitation as a precondition to payment of child support are inapposite to laches or the facts of this present dispute.

applicable statute of limitations. A.Br. 2, 4, 8, 14, 16-18. She neglects to mention, however, that *DOIT* cited *Borland* with *approval* and did not overturn *Borland*. *DOIT, Inc.*, 926 P.2d at 845 (Utah 1996) (citing *Borland*). Appellant has also failed to inform the Court that *DOIT* was subsequently clarified by the Utah Supreme Court in *Insight Assets, Inc. v. Farias*, 321 P.3d 1021, 1025-26, 1026 n.24 (Utah 2013) (emphasis added), in response to an argument (very similar to the one Appellant presently urges) that *DOIT* forbade laches:

Insight Assets is correct that six years is the applicable statute of limitations for relief under the Trust Deed and we have stated that “it is the practically invariable rule that laches cannot be a defense before the statutory limitation has expired.”[] ***However, that rule is not absolute.*** It is also true that “[t]he doctrine of laches may apply in equity, whether or not a statute of limitation also applies and whether or not an applicable statute of limitation has been satisfied.”[]

The Utah Supreme Court then found that when this case-by-case approach was utilized in relation to ascertaining the availability of laches, the equitable defense of laches did indeed apply to Purchase Money Rule and mortgage foreclosure actions, even in situations where the statute of limitations had not run, notwithstanding the earlier dicta in *DOIT*. *Id.*

In the present instance, the Utah Legislature expressly provided that 1) “In the absence of a court order to the contrary, a parent who incurs child care expense shall provide written verification of the cost and identity of a child care provider to the other parent upon initial engagement of a provider and thereafter on the request of the other parent”, U.C.A. § 78B-12-214 (2)(b)(i); 2) “In the absence of a court order to the contrary, the parent shall notify

the other parent of any change of child care provider or the monthly expense of child care within 30 calendar days of the date of the change”, U.C.A. § 78B-12-214 (2)(b)(ii); and 3) “In addition to any other sanctions provided by the court, *a parent incurring child care expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if the parent incurring the expenses fails to comply with Subsection (2)(b)*”, U.C.A. § 78B-12-214 (3) (emphasis added). Given the existence of these unique statutory provisions and the specialized nature of the subject matter,³ it is reasonable to conclude that a Utah Court may deny recovery for parents who fail to give required notice within the required timeframe, even if the recovery is not precluded by a longer parallel statute of limitations provision, in situations where equity and fairness so require it, including where laches would operate to preclude it.

In sum, Appellant’s characterization of existing Utah law pertaining to laches is simply incorrect, both generally and as to the specific statutory provisions relevant to this dispute.

³ Appellant relies heavily on inapposite precedents and superficial quotations. A.Br. 2, 4-5, 8, 14-19. For example, neither *DOIT*, nor *State v. Canton*, 308 P.3d 517, 522 (Utah 2013), nor *Jacobs v. Hafen*, 917 P.2d 1078 (Utah 1996), nor *Lee v. Gaufin*, 867 P.2d 572 (Utah 1993), nor *Fisher v. Davis*, 291 P. 493 (Utah 1930) involved child support, any statutory scheme with a provision similar to U.C.A. § 78B-12-214 (2-3), or subject matter even remotely similar to this present litigation. As for *French v. Johnson*, 401 P.2d 315 (Utah 1965), that case was decided before the modern child support statutory scheme had been enacted and before the existence of U.C.A. § 78B-12-214 (3). As discussed in the next section, these differentiations as to the aforementioned cases are highly significant for purposes of proper laches analysis and prevent any direct significance for purposes of analyzing the correctness of *Veysey I*.

B. NEITHER THE UNITED STATES SUPREME COURT NOR PRINCIPLES ASSOCIATED WITH SEPARATION OF POWERS PRECLUDE LACHES AS A DEFENSE TO STATUTORY ACTIONS AND ACTIONS FOR CHILD SUPPORT

Appellant posits that allowing a laches defense to child support poses a grave threat to our constitutional order by threatening the separation of powers between the judicial branch and the legislative branch. A.Br. 3-4, 18-19. In support of this proposition, she cites a number of federal cases, including most notably *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 134 S.Ct. 1962 (2014). *Id.* However, Appellant's own cited line of precedent readily debunks her own central thesis.

Contrary to Appellant's mischaracterization, *Petrella* embraces the same kind of case-by-case analysis of availability for laches as has been utilized by the Utah Supreme Court in *Insight Assets, Inc.*, 321 P.3d at 1025-26, 1026 n.24.⁴ Specifically, *Petrella* clarified that laches is sometimes a defense to a statutory legal action and sometimes not, *depending on*

⁴ Contrary to Appellant's assertions, App. Brief at 3, 14, 18, *Jacobsen v. Deseret Book Co.*, 287 F.3d 936, 951 (10th Cir. 2002), expressly endorses the same case-by-case analysis for laches as *Petrella*, *SCA Hygiene Products*, and *Insight Assets*. *Jacobsen* merely ascertained the *Copyright Act* did not allow laches, while simultaneously stating that "it is possible, in rare cases, that a statute of limitations can be cut short by the doctrine of laches", depending on the statutory scheme at issue. *Id.* As explained by the Tenth Circuit Court of Appeals in *Yeager v. PMN II*, 602 Fed.Appx. 423, 426 n.1, 430-31, 430 n.6 (10th Cir. 2015), the federal and Utah approaches to analysis of laches are similar, with the result that laches is available as a defense to the Lanham Act alongside statute of limitations even though laches is not permitted by the Copyright Act, due to the different nature, history, verbiage, and intent of the two statutory schemes.

the specific verbiage of the statutory provisions in question and the general nature of the specific statutory scheme in question. While ruling Congress did not intend for laches to be used in connection with the *Copyright Act* to cut short an action otherwise qualifying under the statute of limitations, *Petrella* took pains to note that “[i]n contrast to the Copyright Act, the Lanham Act . . . expressly provides for defensive use of ‘equitable principles, including laches.’ 15 U.S.C. § 1115(b)(9). . . . Based in part on § 282 and commentary thereon, legislative history, and historical practice, the Federal Circuit has held that laches can bar damages incurred prior to the commencement of [a Patent Act] suit”. *Petrella*, 134 S.Ct. at 1973, 1974 n.15.

The Federal Circuit Court of Appeals subsequently considered the same argument Appellant now makes in this present litigation: that *Petrella* stands for the general abolition of laches as a defense to statutory legal actions qualifying under an applicable statute of limitations, and since laches was disallowed in relation to the *Copyright Act*, laches must also necessarily be disallowed in relation to the *Patent Act*. *SCA Hygiene Products Aktiebolag v. First Quality Baby Prod. LLC*, 807 F.3d 1311 (Fed. Cir. 2015) (en banc). The Federal Circuit Court rejected this argument by applying the same case-by-case analysis approach already used by Utah courts, and in the process explained why Appellant’s arguments in this present appeal are without merit.

First, the Federal Circuit Court noted that “[L]aches and a statute of limitations are not inherently incompatible. ‘By section 286, Congress imposed an *arbitrary* limitation on the period for which damages may be awarded on any claim for patent infringement.

Laches, on the other hand, invokes the *discretionary* power of the district court to limit the defendant's liability for infringement by reason of the equities between the particular parties.” *Id.* at 1318. Furthermore, “the merger of law and equity courts allowed laches to bar legal relief. When in 1915 Congress enacted 28 U.S.C. § 398—which authorized parties to plead equitable defenses at law without having to file a separate bill in equity—laches became available to bar legal relief, including patent damage actions.” *Id.* at 1318; *compare Borland*, 733 P.2d at 146 (“Utah long ago abolished any formal distinction between law and equity.”).

Second, the Federal Circuit Court explained that the governing test was one of ascertaining what Congress had enacted and intended relative to laches and any relevant statutory scheme, as opposed to the Court attempting to judicially impose laches in a situation inimical to the verbiage and design of the statutory scheme. *SCA Hygiene Products Aktiebolag*, 807 F.3d at 1315 (“in the 1952 Patent Act, Congress settled that laches and a time limitation on the recovery of damages can coexist in patent law. We must respect that statutory law.”). The Federal Circuit Court observed that applying the verbiage and intent of a statutory scheme in this manner reflects *respect* for the legislative role, not a violation of the separation of powers:

Petrella fundamentally concerns separation of powers. That is, *Petrella* eliminates copyright's judicially-created laches defense because Congress, through a statute of limitations, has already spoken on the timeliness of copyright infringement claims, so there is no room for a judicially-created timeliness doctrine. *See Petrella*, 134 S.Ct. at 1974 (describing laches as “gap-filling, not legislation-overriding”).

Id. at 1329. The Federal Circuit Court pointed out that “the Supreme Court in *Petrella* recognized that Congress could provide for a laches defense, noting, as an example, that it had done so in the Lanham Act, governing trademarks” and that the Supreme Court “took no position on whether its decision extends to the patent context”. *Id.* at 1321.

Third, the Federal Circuit Court identified various criteria a court could use to ascertain whether laches is properly available as a defense relative to a specific statutory scheme: whether there is a statutory provision that explicitly provides for laches, or whether legal “commentary . . . legislative history, and historical practice” in relation to the statutory scheme indicates an implied intent for laches to be available. *Id.* As part of this analysis, the Federal Circuit Court included use of a well-established canon of statutory construction: “Statutes which invade the common law ... are to be read with a presumption favoring the retention of long-established and familiar principles, except when a statutory purpose to the contrary is evident.” . . . ‘In order to abrogate a common-law principle, the statute must speak directly to the question addressed by the common law.’” *Id.* at 1324. The Court also examined the practical subject matter of the statutory scheme and whether the presence or absence of laches was likely to imperil the apparent policy objectives being pursued by Congress in relation to the statute. *Id.* at 1330. As a result of this analysis, the Federal Circuit Court concluded Congress did not intend for laches to be available in

relation to the Copyright Act, but did intend for laches to be available in relation to the Patent Act and the Landham Act (trademarks). *Id.* at 1321, 1330.⁵

Thus, contrary to what Appellant posits, application of the *Petrella/SCA Hygiene Products* analytic criteria to section 78B-12-214 (3) of the Utah Code and the question of laches actually weigh in favor of the ruling already reached in this Court's *Veysey I* decision.

C. STATUTORY LACHES AND EQUITABLE LACHES ARE WIDELY UTILIZED IN VARIOUS STATES, AND DISALLOWED IN OTHER STATES, DEPENDING ON THE SPECIFIC NUANCES OF EACH RELEVANT STATUTORY SCHEME

Unsurprisingly, Utah's sister states and various federal courts utilize variations of the same nuanced laches analysis described above in relation to the Utah Supreme Court, this Court, the United States Supreme Court, and the United States Federal Circuit Court of Appeals. Predictably, statutory laches and/or equitable laches have been found to have been legislatively enacted or intended in some instances, but not in others.

⁵ See also *Silicon Laboratories, Inc. v. Cresta Tech. Corp.*, 2016 WL 693291 * 1 (N.D. Cal. 2016) ("Congress recognized laches in 35 U.S.C. § 282 for a reason.[] Trial courts must defer to that reasoning, no matter their own doubts about the tension between laches and the six-year statute of limitations in 35 U.S.C. § 286"); *S3 Graphics Co., Ltd. v. ATI Technologies, ULC*, 2015 WL 7307241 * 18 n.19 (D. Del. 2015) (statutory laches operates alongside statute of limitations for patent).

Although Appellant is certainly correct that some states do not allow laches as a defense to statutory, legal, and/or monetary actions of various descriptions, Appellant neglects to acknowledge that the inquiry is statute-specific and heavily dependent on the nuances of local enactments.⁶ Appellant's presentation is also misleading because it fails to offer any representative sample of sister states who do allow laches as a

⁶ In contrast to the situation here, Appellant's cited decisions from other states do not involve any statutory scheme with a provision similar to U.C.A. § 78B-12-214 (2-3) or other unique features of Utah law, and instead involve novel local statutes. For example, *Cowan v. Cowan*, 19 P.3d 322, 326-27 (Okla. Civ. App. Div. 1 2000), relied on an examination of Oklahoma's unique statutory scheme and history associated with the statute of limitations and "dormant judgments", and the validity of *Cowan* has been called into question, see *Hedges v. Hedges*, 66 P.3d 364, 369 (Okla. 2002) (declining to "globally" adopt the Court of Appeals' decision in *Cowan v. Cowan* and leaving the question of laches to another day). *Hammond v. Hammond*, 14 P.3d 199, 200-03 (Wyo. 2000), involved a similar parsed analysis under Wyoming's unique statutory scheme, and the *Hammond* holding was subsequently narrowed, see *Windsor Energy Group, L.L.C. v. Noble Energy, Inc.*, 330 P.3d 285, 291 (Wyo. 2014) (rejecting *Hammond*'s assertion of a blanket rule and instead indicating that the availability of laches as a defense depends on a case-by-case analysis of the relevant statutory scheme in play: "The totality of our precedent convinces us that laches should be available in certain circumstances in actions at law, including breach of contract actions, governed by a statute of limitations. Windsor's argument that laches is inapplicable whenever a statute of limitations governs a claim would completely abolish the doctrine of laches because all actions in Wyoming are governed by a statute of limitations."). *In re Marriage of Johnson*, 2014 CoA 145 (Co. 2014) involved the unique history of Colorado statutes concerning statutes of limitations and the waiver of interest for arrears; and *In re Parentage of Shade ex rel. Shade*, 126 P.3d 445, 450-52 (Kan. App. 2006) involved a Kansas statutory scheme without the same features as Utah. Utah has its own precedents and statutes directly on point.

defense to statutory, legal, and/or monetary actions in a manner similar to what has long existed in Utah.⁷

D. THE DISTRICT COURT MADE CORRECT FACTUAL FINDINGS WHILE PROPERLY APPLYING THE PRINCIPLES OF *VEYSEY I*, AND SUCH FINDINGS ARE ENTITLED TO DEFERENCE BY THIS COURT

As reflected in more detail in the Statement of the Case section, the District Court avoided committing any legal error by carefully implementing the precise legal doctrines, legal authorities, and legal criteria that this Court directed pursuant to *Veysey I*. Accordingly, the only truly unresolved issue in connection with this second appeal after remand is whether the District Court’s “application of the law to the facts” in relation to laches and discretionary equitable application of U.C.A. § 78B-12-214 (3) was “supported by adequate factual findings”. *Veysey I*, 2014 UT App at ¶ 6. This Court accords “deference” to the District Court’s findings of fact in support of laches, *id.*, which factual findings will not be overturned unless “clearly erroneous”. *Anderson v. Doms*, 1999 UT App 207, ¶ 8.

⁷ *E.g. Corya v. Sanders*, 155 So.3d 1279, 1288-89 (Fl. Dist. Ct. App. 2015) (statutory laches a permissible defense against action for trust accounting); *Kovach v. Lewis*, 2012 WL 1139121 * 8 (Oh. Ct. App. 2012) (statutory laches under Ohio law precluded Mother from recovering uninsured birth expenses from Father); *Deere v. State*, 2012 WL 4807991 * 1 (Nev. 2012) (statutory laches a valid defense against habeas corpus petition); *In re Estates of Cipriani*, 2009 WL 1741851 * 5 (Surr. Ct. N.Y. 2009) (statutory laches precluded illegitimate heir from announcing herself and asserting a claim against fiduciary only after estate distribution had already occurred); *Fisher v. Fisher*, 613 So.2d 1370, 1371 (Fl. Dist. Ct. App. 1993) (Father could assert equitable laches as defense to enforcement of foreign decree for child support; Father could also have asserted statutory laches as a defense if he had timely raised it).

As the extensive quotation in the Statement of the Case section reflects, the District Court's July 16, 2015, Findings of Fact and Conclusions of Law (R. 964 (¶¶ 1, 3-7, 9-18, underlining omitted and emphasis added)) were correct, rational, and not clearly erroneous. The District Court reviewed email, credit card summaries, and other documents presented by the parties. *Id.* The District Court also considered timelines, the conspicuous absence of certain documentation, the impossibility of obtaining documentation due to the time delay in bringing the action, and the pattern of various acts and omissions by the parties. *Id.* The Court observed the testimony and demeanor of the parties, as well as the confusion and prejudice caused in the evidentiary presentation. *Id.*; *see also* A.Br. 22-24. The District Court observed first-hand Appellant's own confused presentation and computations, as well as the general disarray and harm caused by her vindictive and irresponsible course of action, en route to an utterly reasonable finding that prejudice had indeed occurred.

Contrary to Appellant's assertions, A.Br. 5-6, 20-24, the Court properly applied the Doctrine of Laches and also properly exercised its discretion as permitted under U.C.A. § 78B-12-214 (3). There was nothing clearly erroneous about the Court's carefully-considered factual findings, which are owed deference. Nor was it erroneous, improper, or arbitrary for the Court to allow the costs incurred between April 2005 and June 2006 costs, given that Appellee decided to waive his right to challenge that portion of Appellant's claim for any reason, including but not limited to laches. Appellant also errs in assuming that Appellee had to have legal custody in order to have had the legal

standing sufficient to contemporaneously challenge Appellant's attempt to incur and impose unnecessarily high provider costs upon Appellee. A.Br. 21-22.

Notably, given the particular procedure through which Appellant pursued this claim, the case has actually been reviewed and ruled on by three separate finders of fact: Commissioner Blomquist, Judge L.A. Dever (emeritus), and Judge Barry Lawrence. The legal basis of the trial court ruling has already been ruled on by the Court of Appeals and was remanded on initial appeal for additional findings of fact to support what the Court determined was a lawful basis for the ruling. As such, this second appeal constitutes a fifth attempt by Appellant to obtain reimbursement on expenses which have been denied by a finder of fact not one but three times already.

CONCLUSION

For the foregoing reasons, the Court should affirm its governing decision in *Veysey I*, and uphold the District Court's decision that Appellant's claims for child care reimbursement are barred by the doctrine of laches, except for the \$875.00 owed for the time period to which the Appellee had previously waived his defense. Appellee requests the court award cost.

SIGNED and DATED this 21st day of March, 2016.

Respectfully Submitted,

/s/ Jenna Hatch

JENNA HATCH

Counsel for Appellee

MAILING CERTIFICATE

I hereby certify that I submitted the Original and Seven Copies (eight copies total), with attachments, of the foregoing Brief of Appellant to the clerk of the Appellate Court, and that I mailed two true and correct copies, postage pre-paid, of the foregoing Brief of Appellant, with attachments, on this 21st day of March, 2016, to the following:

Alexis Nelson
775 High Ridge Drive
Alpine, UT 84004

/s/ Jenna Hatch
JENNA HATCH
Attorney for Appellee

EXHIBIT A

78B-12-214 Child care expenses -- Expenses not incurred.

- (1) The child support order shall require that each parent share equally the reasonable work-related child care expenses of the parents.
- (2)
 - (a) If an actual expense for child care is incurred, a parent shall begin paying his share on a monthly basis immediately upon presentation of proof of the child care expense, but if the child care expense ceases to be incurred, that parent may suspend making monthly payment of that expense while it is not being incurred, without obtaining a modification of the child support order.
 - (b)
 - (i) In the absence of a court order to the contrary, a parent who incurs child care expense shall provide written verification of the cost and identity of a child care provider to the other parent upon initial engagement of a provider and thereafter on the request of the other parent.
 - (ii) In the absence of a court order to the contrary, the parent shall notify the other parent of any change of child care provider or the monthly expense of child care within 30 calendar days of the date of the change.
- (3) In addition to any other sanctions provided by the court, a parent incurring child care expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if the parent incurring the expenses fails to comply with Subsection (2)(b).

Renumbered and Amended by Chapter 3, 2008 General Session

EXHIBIT B

Alexis V. Nelson
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Alpine, Utah 84004
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The Order of Court is stated below:

Dated: July 16, 2015
08:47:14 AM

/s/ BARRY LAWRENCE
District Court Judge



IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

ANDREW VEYSEY,

Petitioner,

vs.

ALEXIS VEYSEY nka ALEXIS NELSON,

Respondent.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Case No. 984907587

Judge: Barry Lawrence
Commissioner: Michelle Blomquist

THIS MATTER comes before the Court on following Respondent Alexis Nelson's ("Respondent's") Objection to Commissioner Recommendation on the Respondent's Motion for Order to Show Cause regarding reimbursement for daycare expenses incurred for the parties' minor children between 2002 and 2006. The Court, having received testimony and evidence by the parties, now enters in its FINDINGS OF FACT and CONCLUSIONS OF LAW:

1. The Court recognizes that variable daycare expenses constitute child support, and that the statute of limitations governing enforcement of child support orders applies to Respondent's claims for reimbursement. *Veysey v. Veysey*, 2014 UT App 264, ¶ 15.
2. All of Respondent's claims for reimbursement fall within the applicable statute of limitations.

3. Respondent's claims for reimbursement prior to April 2005, however, are barred by laches.
4. Under Utah case law, a laches analysis requires a determination of: (1) whether Respondent delayed unreasonably; and (2) whether Petitioner was prejudiced by that delay. In order for laches to bar any of Respondent's claims, both elements must be found.
5. With respect to the element of unreasonable delay, Respondent's knowledge as an attorney of the applicable statute of limitations does not excuse her delay, and is not applicable to a laches analysis. Respondent waited for over a decade to seek reimbursement of the requested expenses. And, she failed to adequately explain the reasons for the delay and failed to explain her lack of diligence in pursuing the claims, other than her assertion that she believed the statute of limitations had not yet run. The Court was not persuaded that her conduct was justified, reasonable or diligent.
6. The Court found Utah Code Ann. § 78B-12-214, while ~~is not~~ dispositive of this case, ~~but is~~ was persuasive with respect to the reasonableness of Respondent's actions.
7. Under this statute, a party needs to provide written notification of the costs and identity of the provider, and notify the other party if anything changes within 30 days of the change. Essentially, this statute establishes a policy of keeping the other party informed when you are going to seek costs.
8. Prior to September 2002, the parties' children were enrolled in daycare at the University of Utah. At some point, the children were moved to Challenger School.
9. Petitioner was aware that the children were enrolled in Challenger School and incurring costs there, but based on the record, there are questions as to whether he knew specifically the amount of costs, whether the costs were significantly more than the University of Utah costs, and what his obligations were with respect to those costs.
10. The only evidence of any written verification given by Respondent to Petitioner was a handbook that was not provided to the Court. There has never been anything in writing given to Petitioner other than that handbook to support Respondent's claims. And, there was nothing presented to the Court indicating that any increased child care expense was ever communicated to Petitioner. The passage of time has made it difficult for Respondent to support her claims.
11. From an email presented to the Court by Petitioner, it appears that Respondent never truly intended to

pursue her claims, but did so as a sort of retribution against Petitioner. That inference is supported by the fact that there was nothing done by Respondent from the time the expenses were incurred until the date of the email ~~over that period of time~~ that indicated an intent to collect these costs from Petitioner.

12. As a result, the Court finds that Respondent was not reasonable in her delay.

13. With respect to prejudice, the Court finds that by failing to properly raise the issue at the time, Petitioner was prevented from having an opportunity to contest ~~contesting~~ the amount owed. If, for example, costs of Challenger School were significantly more than those of the University of Utah, that should have been brought to Petitioner's attention so that he could have challenged that at the time, and perhaps cause the parties to agree to a less expensive provider.

14. The passage of time has also made it difficult to demonstrate the amount owed. For example, Respondent's payment summary entered into evidence only dealt with credit card payments made by Petitioner. If there were cash payments or some equitable adjustments that needed to be made, those would not have been able to be made because of the passage of time. If Respondent were now permitted to claim the child care expenses from 2002 through 2005, that would be unfair to the Petitioner. Moreover, the passage of time has contributed to Respondent's inability to properly and reasonably support the amount of her claims, as demonstrated by the confusion surrounding her explanation of her methodology in computing the amount owed.

15. As a result, the Court finds that Petitioner was prejudiced by the delay sufficient to support a finding of laches.

16. The Court, however, is not persuaded that the Commissioner's ruling allowing the April, 2005 to June, 2006 costs should be disallowed. Moreover, Petitioner does not strenuously object to those costs. ~~The parties, however, agree that costs from April 2005 to June 2006 are legitimate and supportable.~~ As a result, Petitioner cannot demonstrate the same level of prejudice with respect to those amounts. Accordingly, laches does not bar those claims.

17. Petitioner is not responsible for the cost of regular half-day kindergarten tuition, but is responsible for any extra tuition paid for full-day kindergarten as an extended care expense. *See Veysey*, 2014 UT App 264 at ¶ 20.

18. Based upon Respondent's testimony, the amount owed for the time period from April 2005 – June 2006 is \$875.00. This amount is a reasonable approximation of the amount owed, and is consistent with the Court of Appeals' mandate regarding the calculation of Petitioner's portion of kindergarten expenses.

19. However, given the unreasonableness of Respondent's delay, it would be inequitable to allow for the collection of interest for that time period. The Court thus denies any award of interest in this case.

20. The Court also denies fees or costs to either party.

21. The Court rules in favor of Respondent, in the amount of \$875.00.

Dated: July 4, 2015

[DOCUMENT ENDS HERE; SIGNATURES ARE FOUND ON FIRST PAGE]

CERTIFICATE OF SERVICE

I hereby certify, that on this 4th day of July, 2015, I delivered true and correct copy(s) of the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW (PROPOSED)** by Clerk of Court using CM/ECF system to the following party(s):

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/Alexis V. Nelson/

EXHIBIT B

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12. As a result, the Court finds that Respondent was not reasonable in her delay.

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21. The Court rules in favor of Respondent, in the amount of \$875.00.

Dated: July 4, 2015

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CERTIFICATE OF SERVICE

I hereby certify, that on this 4th day of July, 2015, I delivered true and correct copy(s) of the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW (PROPOSED)** by Clerk of Court using CM/ECF system to the following party(s):

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/Alexis V. Nelson/

EXHIBIT C

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339 P.3d 131 (Utah App. 2014)

2014 UT App 264

ANDREW VEYSEY, Petitioner and Appellee,

v.

ALEXIS VEYSEY, Respondent and Appellant

No. 20130726-CA

Court of Appeals of Utah

November 14, 2014

Third District Court, Salt Lake Department. The Honorable L.A. Dever. No. 984907587.

Alexis Veysey, Appellant Pro se.

Rebecca Long Okura and Jenna Hatch, Attorneys for Appellee.

JUDGE JAMES Z. DAVIS authored this Opinion, in which JUDGES GREGORY K. ORME and J. FREDERIC VOROS JR. concurred.

OPINION

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DAVIS, Judge:

[¶1] Alexis Veysey (Mother) challenges the district court's adoption of the domestic commissioner's recommendation regarding reimbursement of daycare expenses for the parties' children. We vacate the district court's order and remand for further proceedings.

BACKGROUND

[¶2] The parties divorced in September 1999. Pursuant to Utah Code section 78B-12-214, the parties' divorce decree required Andrew Veysey (Father) to reimburse Mother for half of "all reasonable monthly day care expenses actually paid by [Mother] and incurred on behalf of the parties' minor children as a result of [Mother's] employment and/or occupational or career training." The decree did not require Father to pay a defined monthly amount of daycare expenses, but rather required him to reimburse Mother within ten days of receiving a receipt for daycare expenses. The decree contained no provision requiring Mother to provide such receipts within a particular time frame.^[1]

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[¶3] On March 5, 2013, Mother filed a Motion for Order to Show Cause requesting a judgment for daycare arrearages accrued between September 2002 and June 2006. During some of this time period, the children attended full-day kindergarten at Challenger, a private school. A hearing was held before a domestic commissioner on April 1, 2013. The commissioner issued a recommendation concluding, "The statute of limitations on child care expenses and the principle of laches preclude[] the court from considering child care expenses more than 8 years old." The recommendation therefore ordered that Father "pay one half of any pre-school or extended care expenses incurred between April 1, 2005 and June of 2006." The calculation ultimately adopted by the commissioner excluded Mother's claims for reimbursement relating to full-day kindergarten at Challenger and included only preschool expenses for the youngest child incurred before she

entered kindergarten in September 2005.

[¶14] Mother objected to the commissioner's recommendation, and a hearing was held before the district court on June 20, 2013. Following the hearing, the district court issued a minute entry stating only, "[T]he decision of the Commissioner is correct." Mother appeals.

ISSUES AND STANDARDS OF REVIEW

[¶15] Mother first argues that the district court erred in adopting the commissioner's employment of an eight-year statute of limitations to bar her claims for reimbursement. "The trial court's application of a statute of limitations presents a question of law which we review for correctness." *Estes v. Tibbs*, 1999 UT 52, ¶ 4, 979 P.2d 823.

[¶16] Mother next asserts that the district court erred in adopting the commissioner's determination that the doctrine of laches applies to this case. "[T]he question of laches presents a mixed question of law and fact." *Johnson v. Johnson*, 2014 UT 21, ¶ 8, 330 P.3d 704. Although "we typically grant some level of deference to the trial court's application of law to the facts," *Wayment v. Howard*, 2006 UT 56, ¶ 9, 144 P.3d 1147, the court's determination must be supported by adequate factual findings, *Anderson v. Thompson*, 2008 UT App 3, ¶ 42, 176 P.3d 464.

[¶17] Finally, Mother argues that the district court's approval of the commissioner's reimbursement calculation erroneously excluded full-day kindergarten expenses that should have been reimbursed as work-related daycare expenses under the statute. "The proper interpretation and application of a statute is a question of law which we review for correctness, affording no deference to the district court's legal conclusion." *Gutierrez v. Medley*, 972 P.2d 913, 914-15 (Utah 1998).

ANALYSIS

I. Statute of Limitations

[¶18] Mother asserts that we should employ the statute of limitations applicable to child support orders and sum-certain judgments for past-due support. That statute of limitations permits enforcement within the longer of four years after the youngest child reaches majority or eight years from the date of entry of a sum-certain judgment. Utah Code Ann. § 78B-5-202(6) (LexisNexis 2012). Father argues that we should employ the general eight-year statute of limitations for judgments. See *id.* § 78B-5-202(1). When two statutes of limitations conflict, the statute applying to a specific type of action controls over a more general statute of limitations. *Perry v. Pioneer Wholesale Supply Co.*, 681 P.2d 214, 216 (Utah 1984). Thus,

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the resolution of this dispute turns on the question of whether daycare expenses constitute child support.

[¶19] The Utah Code is ambiguous as to whether daycare costs that have not been reduced to a judgment fall within the definition of child support. First, the Utah Code mandates that a requirement "that each parent share equally the reasonable work-related child care expenses of the parents" be included in "[t]he child support order." Utah Code Ann. § 78B-12-214(1) (LexisNexis 2012) (emphasis added). A child support order is defined as an order that "establishes or modifies child support" or "reduces child support arrearages to judgment." *Id.* §

78B-12-102(9)(a)-(b).

[¶10] Child support is defined as

[1] a base child support award, or [2] a monthly financial award for uninsured medical expenses, ordered by a tribunal for the support of a child, including [3] current periodic payments, [4] all arrearages which accrue under an order for current periodic payments, and [5] sum certain judgments awarded for arrearages, medical expenses, and child care costs.

Id. § 78B-12-102(8). "Base child support award" is defined as "the award that may be ordered and is calculated using the [child support] guidelines" [2] and explicitly excludes "medical expenses and work-related child care costs." *Id.* § 78B-12-102(4). The other types of support identified in the definition contemplate only fixed amounts--monthly financial awards, current periodic payments, arrearages, and sum-certain judgments. Mother urges us to interpret "current periodic payments" as encompassing the type of variable "reasonable monthly day care expenses actually paid" provided for in the parties' divorce decree. However, variable daycare expenses cannot be classified as "periodic" because they are based on actual expenses incurred, which may vary from week to week and month to month. Similarly, the phrase "arrearages which accrue under an order for current periodic payments" contemplates the existence of an order defining a specific amount to be paid periodically.

[¶11] Thus, although the Utah Code requires courts to order the payment of work-related daycare expenses as part of the child support order, it appears to exclude such expenses (at least until they are reduced to judgment) from the definition of child support. We resolve this inconsistency by looking at the child support statute as a whole and by considering the intent and purpose of the legislature in enacting the definition. See *Carter v. University of Utah Med. Ctr.*, 2006 UT 78, ¶¶ 9, 13, 150 P.3d 467 (explaining that "we seek to render all parts [of the statute] relevant and meaningful, and we accordingly avoid interpretations that will render portions of a statute superfluous or inoperative," and that "[w]e read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters" (alterations in original) (citations and internal quotation marks omitted)).

[¶12] Until 2000, the child support statute's definition of child support merely stated, "'Child support' is defined in Section 62A-11-401." See Utah Code Ann. § 78-45-2(7) (Lexis Supp. 1999); see also Act of March 13, 2000, ch. 161, § 22, 2000 Utah Laws 558, 570. Section 62A-11-401 is contained in the statute relating to income withholding by the Office of Recovery Services (ORS) and provides definitions relevant to that statute. See Utah Code Ann. § 62A-11-401 (LexisNexis 2011). ORS's role in collecting child support is limited to specific dollar amounts contained in a support order and judgments for arrearages; ORS does not collect ongoing medical and daycare expenses where the dollar amount of those expenses is not specified in the divorce decree or reduced to a judgment. Utah Department of Human Services, Office of Recovery Services/Child Support Services, *Notice of Services*, 2 (July 1, 2014), available at <http://www.ors.utah.gov/documents/ANIAForm.pdf>. Thus, it stands to reason that the definition of child support contained in the ORS statute includes only

excluding variable support, i.e., support defined by category rather than by dollar amount, from the child support statute's definition.

[¶13] Although the legislature added an explicit definition of child support to the child support statute in 2000, that definition still relied on the language used in the ORS statute rather than creating a distinct definition for purposes of the child support statute.^[3] Compare Act of March 13, 2000, ch. 161, § 14, 2000 Utah Laws 558, 566, with *id.* ch. 161, § 22, 2000 Utah Laws 558, 570. Because the legislature simply adopted an already-existing definition, it does not appear to have made a conscious decision to exclude variable medical and daycare expenses from the definition of child support in the context of the child support statute, and indeed, its requirement that reimbursement for daycare expenses be provided for in *the child support order* suggests the opposite. See Utah Code Ann. § 78B-12-214(1).

[¶14] The exclusion of medical and daycare expenses from the definition of base child support also does not appear to stem from the legislature's determination that these expenses do not constitute child support, but from its desire to distinguish these two categories from other categories of child-rearing expenses presumably covered by the base child support award. See *Davis v. Davis*, 2011 UT App 311, ¶ 17, 263 P.3d 520 (" [C]hild-rearing expenses not statutorily distinguished from regular child support should be considered part and parcel of the child support award." (citation and internal quotation marks omitted)). Indeed, the fact that the legislature felt the need to distinguish " base child support" from " child support" on this basis suggests that it expected medical and daycare expenses to fall within the general definition of child support and that a different term was needed to refer to the base award " calculated using the [child support] guidelines." See Utah Code Ann. § 78B-12-102(4) (LexisNexis 2012); see also *Wardle v. Bowen*, 2005 UT App 226, para. 11 (" [T]here is no question that . . . medical and daycare expenses are in the nature of child support."); *Black's Law Dictionary* 274 (9th ed. 2009) (defining child support as, inter alia, " the money legally owed by one parent to the other for the expenses incurred for children of the marriage").

[¶15] In short, we conclude that variable daycare expenses constitute child support and that the statute of limitations governing enforcement of child support orders applies to Mother's claim for reimbursement. Because the statute of limitations permits enforcement of the divorce decree's order on daycare expenses at least until four years after the youngest child reaches majority, it does not preclude Mother from seeking reimbursement for the pre-2005 daycare expenses. See Utah Code Ann. § 78B-5-202(6) (LexisNexis 2012).

II. Laches

[¶16] The commissioner alternatively determined that the principle of laches barred Mother from recovering expenses incurred prior to April 2005. " To successfully assert a laches defense, a defendant must establish both that the plaintiff unreasonably delayed in bringing an action and that the defendant was prejudiced by that delay." *Borland v. Chandler*, 733 P.2d 144, 147 (Utah 1987). " The length of time that constitutes a lack of diligence depend[s] on the circumstances of each case, because the propriety of refusing a claim is equally predicated upon the gravity of the prejudice suffered . . . and the length of delay." *Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Lindberg*, 2010 UT 51, ¶ 28, 238 P.3d 1054 (alteration and omission in original)

(citation and internal quotation marks omitted). This issue is therefore highly fact-dependent, requiring consideration of " the relative harm caused by the petitioner's delay, the relative harm to the petitioner, and whether or not the respondent acted in good faith." *Id.*

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[¶17] The commissioner's recommendation contains no findings supporting a determination that laches applies in this case. It merely states that both the statute of limitations *and* the principle of laches preclude the court from considering daycare expenses more than eight years old. First, this determination is erroneous inasmuch as it suggests that the passage of a particular length of time was alone sufficient to invoke the doctrine of laches. *See id.* Second, the findings made by the commissioner at the hearing do not address the two elements of a laches defense.^[4] The commissioner did not explicitly find that Mother unreasonably delayed in bringing her action. Instead, the commissioner was equivocal on this point, merely observing that the parties disputed this issue and that "[i]t appears that [Mother] has not provided proof of these expenses until recently." (Emphasis added.) The commissioner made no findings regarding the prejudicial impact of any delay on Father. *See id.*; *Borland*, 733 P.2d at 147. Without specific findings supporting a determination that laches applied in this case, the commissioner's recommendation--and, accordingly, the district court's adoption of that recommendation^[5]--was erroneous.

[¶18] The absence of more specific findings is perhaps understandable in light of the fact that the commissioner relied primarily on the statute of limitations in denying Mother's claim for reimbursement of pre-2005 expenses. *See supra* note 4. However, given our reversal of that determination, additional findings are necessary to determine which of Mother's expenses may be properly reimbursed. If supported by adequate findings, a determination that some portion of Mother's claims are barred by laches would not necessarily be inappropriate.^[6] Alternatively, based on adequate findings, the district court may exercise its discretion to deny Mother's claims if it determines that she failed to comply with Utah Code section 78B-12-214(2)(b), which outlines the verification requirements a parent must comply with to obtain reimbursement for daycare expenses,^[7] see Utah Code Ann. § 78B-12-214(2)-(3) (LexisNexis 2012), or with the requirements of the parties' divorce decree, *see supra* ¶ 2 & note 1. Or the district court may conclude that all of Mother's claims are reimbursable because they were brought within the statute of limitations. In any event, additional findings are needed to support the district court's determination.

III. Extended-Care Expenses

[¶19] Finally, although Mother acknowledges that private-school tuition does not fall within the scope of reimbursable

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daycare expenses, she argues that she should be entitled to reimbursement for one-fourth of the cost of full-day kindergarten because the second half of the day constitutes " extended care expenses," for which the commissioner acknowledged Mother should receive reimbursement. The commissioner indicated that " extended care prior to or after the core time period is also a type of day care expense[]" and that the parties should " work together" to determine what portion of the claimed full-day kindergarten tuition, if any, constituted daycare expenses. Because the " core

time period" for kindergarten is only half of the regular school day, Mother asserts that the other half should be categorized as daycare.^[8]

[¶20] Mother claims that she has always sought reimbursement for only one-fourth of the kindergarten expenses because the first half of the cost of full-day kindergarten is attributable to the regular kindergarten school day. However, when Mother submitted a proposed order to the commissioner, it contained the same calculation that the commissioner had acknowledged to be erroneous, which included the entire cost of the youngest child's full-day kindergarten tuition. Thus, when Father submitted an order that excluded the kindergarten expenses completely, the commissioner adopted that order. While Father is not responsible for the cost of regular half-day kindergarten tuition, any extra tuition paid for full-day kindergarten may qualify as extended-care expenses.^[9] On remand, the district court should take this into consideration in calculating the amount owed by Father.

CONCLUSION

[¶21] The district court erred in adopting the commissioner's recommendation that Mother's pre-2005 reimbursement claims were barred by the statute of limitations and laches. The district court's adoption of the commissioner's calculation excluding extended-care costs associated with the youngest child's full-day kindergarten was likewise erroneous. Accordingly, we vacate the district court's order and remand for additional findings and conclusions, in accordance with this opinion, regarding Mother's claims for reimbursement.

Notes:

[1] Following an order to show cause hearing in 2000 before a different commissioner, that commissioner recommended as follows:

2. From this point forward, if family members provide child care, [Father] does not need to pay. If [Mother's] neighbor provides the child care, [Mother] is to provide verification within 30 days and [Father] is to pay 1/2 the amount within 5 days. [Mother] to provide copies of checks to show verification of payment. 3. Parties stipulate to modify the decree of divorce with the language that verification of child care expenses is to be provided.

Neither party objected to this recommendation. See *generally* Utah R. Civ. P. 108(a) (explaining that a commissioner's recommendation "is the order of the court until modified by the court" and outlining the procedure for objecting to the recommendation). The parties disagree as to whether the commissioner's explicit reference to Mother's neighbor indicates that the modified verification requirements were intended to apply only to daycare expenses associated with the neighbor or whether they can be interpreted to apply to all daycare expenses. We need not resolve this dispute for purposes of our analysis, but it may be relevant to the district court's determination on remand.

[2] The child support guidelines are contained in sections 78B-12-201 to -219 of the Utah Code. Utah Code Ann. § 78B-12-102(12) (LexisNexis 2012). See *generally id.* § § 78B-12-201 to -219 (2012 & Supp. 2013).

[3] The only current difference between the two definitions is that the ORS definition "includes obligations ordered by a tribunal for the support of a spouse or former spouse with whom the child

resides if the spousal support is collected with the child support." *Compare* Utah Code Ann. § 62A-11-401 (LexisNexis 2011), *with id.* § 78B-12-102(8) (2012).

[4] In fact, although the order adopted by the commissioner asserted laches as a justification for her ruling, her oral ruling did not appear to rely on laches. The commissioner focused primarily on the statute of limitations and asserted only that "there's a principle of laches that indicates that, if a party simply does not provide proof for a significant period of time and, simply, does not make any requests whatsoever with regard to those expenses, that they can waive that merely by the passage of time." Although the commissioner discussed laches, she did not explicitly determine that it applied in this case until she approved the written order.

[5] Although we conclude that the district court's findings were ultimately inadequate to support its determination that laches applied, our determination is based on the inadequacy of the commissioner's findings, not the fact that the district court summarily adopted those findings as its own. Contrary to Mother's assertion, it is not erroneous for a district court to adopt a commissioner's findings rather than making its own separate findings where its decision and reasoning do not differ from that of the commissioner. Where the district court does so, we will simply evaluate the commissioner's findings as though they were made by the district court.

[6] Relying on Utah Code section 78B-12-109, Mother asserts that laches is inapplicable to claims for support made pursuant to a court order. However, this section precludes only waiver and estoppel defenses and says nothing about laches. See Utah Code Ann. § 78B-12-109 (LexisNexis 2012). While the doctrines of estoppel and laches may be similar, they are still distinct legal doctrines with different elements. *Compare CECO Corp. v. Concrete Specialists, Inc.*, 772 P.2d 967, 969-70 (Utah 1989) (outlining the elements of equitable estoppel), *with Papanikolas Bros. Enters. v. Sugarhouse Shopping Ctr. Assocs.*, 535 P.2d 1256, 1260 (Utah 1975) (outlining the elements of laches). We decline to read section 78B-12-109 more broadly than it is written.

[7] The commissioner suggested as much at the hearing but did not base her ruling on that ground.

[8] Mother does not demonstrate that the cost of an additional half day of kindergarten would be no more expensive than a half day of extended care or other daycare.

[9] That said, we are not convinced that Mother's one-fourth calculation accurately represents Father's share of the daycare obligation. Father would not be required to pay any portion of the children's tuition for half-day kindergarten. Thus, his portion should be, at most, half of the difference between the cost of full-day kindergarten and the cost of half-day kindergarten, which may not be the same as one-fourth of the total cost of full-day kindergarten. And it may be that some further adjustment is necessary if full-day kindergarten is significantly more expensive than traditional daycare and Father did not at least tacitly agree to the use of full-day kindergarten as daycare.

EXHIBIT D

1 least to some extent, probative. Go ahead.

2 A. The reason for that was--

3 Q. I'm sorry. I asked is it true that you did require
4 reimbursement for travel costs to bring the kids to the airport
5 for his visit?

6 A. Yes, at the request of my husband.

7 Q. Thank you. Okay. Isn't it true that you did not
8 originally intend to request reimbursement of the \$14,000 of
9 Challenger School tuition reimbursement from Mr. Veysey until
10 after he was given reimbursement for other costs from you?

11 MR. VAN DYKE: Objection, relevance.

12 THE COURT: Overruled. Go ahead.

13 A. That's not true.

14 Q. Could I have you turn to Exhibit--open the white binder
15 to tab 4? Can you read for us the header, the from and to and
16 the date it was sent, this document was sent?

17 A. The header?

18 Q. So read us from and to and sent.

19 A. From Alexis Nelson to Andrew Veysey, sent Thursday,
20 January 24, 2013.

21 Q. Can you read us the second paragraph?

22 A. Until you started being a stickler on everything like
23 past-due insurance payments, I didn't even realize I owed. I
24 didn't want to push this. Fortunately, I think the facts are on
25 my side on this issue.

1 Q. Thank you. Do you deny that you brought this claim
2 after Mr. Veysey obtained reimbursement of other expenses from
3 you?

4 A. Yes. I deny it. It was at issue in the modification
5 proceeding which is the same place that he received payment on
6 the health care insurance premiums.

7 Q. Are the health care insurance premiums, the past-due
8 insurance payments that you're referring to in this e-mail that
9 caused you to bring your claim?

10 A. Both the child support arrearages and the past-due
11 insurance premiums were at issue in the modification proceeding.

12 So--and we discussed specifically that I would have the right to
13 bring my cause of action for the past-due day care expenses at
14 the modification proceeding. So, no. This was not instigated
15 because he received payment on health insurance premiums,
16 although I find it interesting that you're bringing this up when
17 you wanted to keep everything secret about the mediation.

18 THE COURT: Yeah. I know you're an attorney, but I
19 don't want you to arguing--

20 MS. HATCH: I move to strike that.

21 THE COURT: --with counsel. You are a witness and I
22 need you to answer the questions, okay? And I will strike that
23 portion of the response. Go ahead, counsel.

24 Q. Isn't it true that you have no documentation that
25 Andrew ever received verification of the Challenger School

1 DIRECT EXAMINATION

2 BY MS. HATCH:

3 Q. Mr. Veysey, when your children were enrolled in the
4 Challenger School, were you ever asked to contribute towards the
5 cost of the Challenger School tuition?

6 A. No.

7 Q. Did you know what the tuition costs were?

8 A. No.

9 Q. Were you ever provided a break-down of what the
10 Challenger School tuition rates were?

11 A. No, never.

12 Q. During any of the years that your children were
13 enrolled in school there did you receive a packet from Ms. Nelson
14 that outlined what her tuition costs or her tuition payments were
15 to Challenger School?

16 A. No.

17 Q. Okay. At any point in time did you object to enrolling
18 the children in Challenger School?

19 A. I don't recall because it's so long ago.

20 Q. Okay. Had you known the tuition costs--had you known
21 that you were being requested to contribute towards the cost of
22 Challenger School would you have objected to their enrollment in
23 that program?

24 MR. VAN DYKE: Objection, leading.

25 THE COURT: I'm going to allow it. Go ahead. Let's

1 just get to the point here.

2 A. I would have objected because I wasn't making very much
3 money. So I wouldn't have been able to pay that money.

4 Q. Okay. Why did you never object?

5 A. Because it was never given to me.

6 Q. How did you think the Challenger School tuition was
7 being paid?

8 A. I didn't know that. I didn't know whether Alexis was
9 paying it or whether she was getting help from her parents.

10 Q. At any point in time were you provided the tuition cost
11 updates as your children moved from one program to the other?

12 A. No.

13 Q. Do you know what--I'll strike that. Prior to your
14 children being enrolled in Challenger School, were you paying
15 towards their day care?

16 A. Yes. I paid when they were at the University of Utah
17 and then when Alexis used a neighbor as a day care.

18 Q. Okay and when they were enrolled in those day care
19 programs, how did you know how much to pay Ms. Nelson?

20 A. She provided me--

21 MR. VAN DYKE: Objection, not relevant. We're not
22 speaking about the neighbor reimbursement. We're talking about
23 Challenger.

24 THE COURT: Overruled. I mean the course of conduct
25 between the parties is relevant. Go ahead.

1 A. She provided me with receipts.

2 Q. Okay. Did Ms. Nelson ever provide you a receipt or a
3 ledger showing her payments to Challenge School while the
4 children were enrolled?

5 A. No.

6 Q. At what point did you become aware that Ms. Nelson
7 wanted you to reimburse one-half of the Challenger School
8 tuition?

9 A. It was during the mediation, the last mediation.

10 Q. Okay.

11 THE COURT: Remind me the date of the mediation, just
12 ball park.

13 A. 2012.

14 MS. HATCH: November of 2012 maybe.

15 Q. And is it accurate that Ms. Nelson did not have any
16 pending modification documents which outlined a request for child
17 care reimbursement for those expenses?

18 A. Correct.

19 Q. Okay. How long was it between your children's initial
20 enrollment and when Ms. Nelson raised the issue of reimbursement
21 on the expenses?

22 A. It's nine, ten years, I think.

23 Q. Okay. I want to have you turn to tab 4 in the white
24 binder and you heard Ms. Nelson testify earlier and read
25 paragraph 2 for us from that e-mail. What did you understand

1 that e-mail paragraph to mean?

2 MR. VAN DYKE: Objection, relevance.

3 THE COURT: Well, I mean I guess he's not author of
4 this, right?

5 MS. HATCH: Correct, Your Honor.

6 THE COURT: I mean I guess he can testify as to the way
7 he interpreted it for the minimal probative value that has. So
8 go ahead.

9 A. I just thought that, you know, she's saying that
10 because I was seeking reimbursement for something else, that
11 that's the reason why she's now seeking reimbursement for day
12 care costs.

13 Q. Okay and let's go back to Challenger School tuition
14 costs. Did you ever agree to pay towards the tuition costs of
15 Challenger School?

16 A. No.

17 Q. Okay. Did Ms. Nelson ever tell you that you were not
18 expected to pay towards the tuition costs of Challenger School?

19 A. No.

20 Q. Did you guys ever discuss the tuition costs?

21 A. No.

22 Q. Okay. In addition to the Challenger School tuition
23 costs, Ms. Nelson testified that she's seeking interest on this.
24 Do you know how much interest she's seeking?

25 A. A little over five thousand dollars.

1 Q. Okay. Would you have had interest charges assessed to
2 you had Ms. Nelson requested this reimbursement at the time that
3 it was incurred?

4 A. No.

5 Q. Have you ever been provided verification that
6 Ms. Nelson herself actually paid the tuition.

7 A. No, I haven't.

8 Q. Okay. Mr. Veysey, at the time your children were
9 enrolled at Challenger School, had you re-married at that point?

10 A. Yes.

11 Q. Okay. Did you have any additional children?

12 A. Not myself, but my wife at the time did.

13 Q. Okay. Where were you living at the time?

14 A. Centerville, Utah.

15 Q. And what was your nature of employment?

16 A. I was an assistant golf professional at a club in Utah,
17 Park City.

18 Q. Okay. Did you have the ability to pay towards
19 Challenger School tuition?

20 A. No. I was making about \$25,000.

21 Q. Per year?

22 A. Yes.

23 Q. Thank you. Are you currently married?

24 A. Yes.

25 Q. Do you have additional children?

1 A. I have two, two new children.

2 Q. Okay and where do you live?

3 A. I live in Scottsdale, Arizona.

4 Q. Okay. What's the nature of your employment?

5 A. I work as a golf professional.

6 THE COURT: Okay. We need you to get a little closer
7 to the microphone to make sure that everything you say is
8 recorded.

9 Q. Can you re-state where you live and what your
10 employment is?

11 A. I live in Scottsdale, Arizonan and currently employed
12 as a golf professional.

13 Q. Is it fair to say that you've made lifestyle decisions
14 which did not account for a twenty thousand dollar judgment--or,
15 I guess a fourteen thousand dollar judgment now?

16 MR. VAN DYKE: Objection, calls for a conclusion.

17 THE COURT: Overruled. I mean it's just some basic
18 stuff. I'll let him testify about it. You can certainly cross-
19 examine, counsel.

20 Q. Mr. Veysey are you currently allowed to claim any or
21 some of your children on your taxes? The children in this
22 matter?

23 A. I claim one child now since mediation.

24 Q. Okay and are there conditions imposed on you claiming
25 any of your children for taxes?

1 A. Yes. I need to be current in my child support
2 payments.

3 Q. Okay. If a judgment were issued against you for the
4 reimbursement expenses from 2002 to 2006, would you be able to
5 claim your children on taxes?

6 MR. VAN DYKE: Objection again, relevance.

7 THE COURT: Is that relevant really to what we're doing
8 here today?

9 MS. HATCH: Your Honor, I believe this goes to
10 prejudice. There's a financial prejudice, not just a prejudice
11 in being able to defend his case because of the delay, but also a
12 prejudice against him financially currently if he can't--if he
13 has a judgment issued against him and cannot claim the children
14 for taxes.

15 THE COURT: I'll certainly let you argue that, but why
16 don't you go to the next set of questions you've got.

17 MS. HATCH: Okay. By way of information, would the
18 Court like information about the differences between the cost of
19 Challenger School and normal day care costs?

20 THE COURT: Sure, to the extent he knows.

21 Q. Okay, Mr. Veysey, are you aware of what the current
22 Challenger School tuition rates are?

23 MR. VAN DYKE: Objection as to current rates.

24 THE COURT: Yeah, I don't know that that's really
25 relevant, is it?

1 MS. HATCH: I guess, Your Honor, we can compare current
2 rates from Challenger School as compared to current trends for
3 child care costs and draw a conclusion. We have no way of
4 obtaining information about average Salt Lake County child care
5 costs from 2002.

6 THE COURT: Isn't this the same nature as Ms. Esplin's
7 declarations and this new stuff that you're asking to get into?

8 MS. HATCH: Your Honor I guess the issue of prejudice,
9 this goes to the heart of prejudice. If the Court is going to
10 limit prejudice to just the information in front of the Court on
11 the lower proceedings, then yes. We will not testify to this.
12 If the Court would like prejudice--

13 THE COURT: See? Your point is that Challenger School
14 is more than--

15 MS. HATCH: More than the average day care.

16 THE COURT: More than the average day care. Is that
17 something that everybody agrees to or is that--

18 MR. VAN DYKE: Well, no, not necessarily. I think
19 other day care is more, some is less. I don't know--

20 THE COURT: All right. You know, I'll let you explore
21 day care costs, but they've got to be costs that he is actually
22 aware of that were incurred for his children, at least to give us
23 the proper foundation for him to make the statement and I guess
24 you can argue from the inferences from there, but if he's just
25 looking up numbers today to compare, I don't know that that's

1 appropriate.

2 MS. HATCH: Okay, very good. I'll skip over that,
3 then.

4 Q. Mr. Veysey do you remember how much you were paying
5 towards child care costs before your children were enrolled in
6 Challenger School?

7 A. I don't. I don't know that number off the top of my
8 head.

9 Q. At that point when you were making those payments,
10 could you financially afford the payments that you were making?

11 A. Barely.

12 Q. Okay and is it your testimony that you couldn't afford
13 the Challenger School tuition rates?

14 A. Right.

15 MS. HATCH: Okay. No further questions, Your Honor.

16 THE COURT: All right. I have a couple of questions
17 that I want--so you heard Ms. Nelson say that you got a handbook
18 at the beginning. How do you respond to that?

19 A. It's been such a long time, I don't remember getting a
20 handbook. There may have been a handbook that she may have shown
21 me, but I definitely don't remember walking away with a handbook.

22 THE COURT: All right. Now, for a period of time here
23 it appears that you paid day care expenses, at least according to
24 Ms. Nelson's accounting, that went to the Challenger School. I
25 mean, for example, in 2002 you paid a portion of day care. You