2/1/2025

No. 24-834

In the Supreme Court of the United States

Evgeny Pistrak,

Petitioner,

v.

Kseniia Golubeva,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF WASHINGTON

PETITION FOR WRIT OF CERTIORARI

Evgeny Pistrak, *pro se*

140th Ave NE D2-1220
Bellevue, WA 98005
(425) 214-2742
evpisa@gmail.com

QUESTIONS PRESENTED

As this Court confirmed in *Arizona v. United States*, 567 U.S. 387 (2012), regulating immigration is an exclusively federal prerogative. By contrast, spousal support obligations ("maintenance") traditionally arise under state family law. All individuals, regardless of immigration status, deserve equal treatment in dissolution proceedings. However, when maintenance determinations rest solely on a spouse's lack of federal work authorization—an area governed exclusively by federal immigration law—state courts risk impermissibly encroaching upon the federal domain. This distinction between obligations flowing naturally from marriage, on the one hand, and those effectively predicated on immigration status, on the other, is critical. Clarifying the boundary ensures that state courts do not impose financial duties based solely on conditions set by federal immigration policy. Such overreach undermines the Constitution's careful allocation of authority between the states and the federal government.

The questions presented are:

1. Whether the Supremacy Clause and federal immigration law preempt a state court from imposing maintenance obligations solely because a spouse lacks work authorization under federal immigration laws.

2. Whether the Supremacy Clause and federal immigration law preempt a state court from using a spouse's immigration status to create obligations under state law that would not otherwise exist.

PARTIES TO THE PROCEEDING

Petitioner Evgeny Pistrak was the respondent in the trial court, the appellant in the Washington Court of Appeals, and the petitioner-appellant in the Washington Supreme Court.

Respondent Kseniia Golubeva was the petitioner in the trial court, the appellee in the Washington Court of Appeals, and the respondent-appellee in the Washington Supreme Court.

RELATED PROCEEDINGS

1. *In re the Marriage of Kseniia Golubeva and Evgeny Pistrak*, No. 15-3-06019-1 (Washington Superior Court, King County): Temporary Order entered November 6, 2015; findings and final dissolution order entered November 18, 2016.

2. *In the Matter of the Marriage of Kseniia Golubeva and Evgeny Pistrak*, No. 76373-3-I (Washington Court of Appeals, Division I): Opinion affirming the award of temporary maintenance entered July 23, 2018; subsequent motion to revoke opinion for lack of subject matter jurisdiction denied October 23, 2018.

3. *In re the Marriage of Kseniia Golubeva and Evgeny Pistrak*, No. 96752-1 (Washington Supreme Court): Motion for discretionary review denied by the Commissioner February 25, 2019; motion to modify granted June 5, 2019; second Commissioner's ruling denying review entered June 10, 2019.

4. *In re the Marriage of Kseniia Golubeva and Evgeny Pistrak*, No. 103460-1 (Washington Supreme Court): Final order entered November 6, 2024, by the justices of the Washington Supreme Court, denying Petitioner's request to allow the late filing of a motion to modify the commissioner's June 10, 2019 ruling. The court considered the motion Petitioner intended to file and found the arguments frivolous and awarded attorney fees to Respondent.

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INTRODUCTION

This case addresses whether federal immigration law preempts a state court's award of spousal maintenance based solely on immigration-related factors, such as the lack of work authorization due to unlawful presence. Respondent was originally admitted to the United States on an F-1 student visa, which required her to demonstrate sufficient financial resources to fund her stay. Following the expiration of her immigration status, she remained unlawfully in the United States, and her lack of work authorization became the basis for her claim of financial need. Petitioner argues that in these circumstances, awarding spousal maintenance to compensate for the lack of work authorization conflicts with federal immigration law and congressional intent, violating the Supremacy Clause of the U.S. Constitution.

OPINIONS BELOW

The final order of the Washington Supreme Court (App. 1a-2a) is unreported. The ruling of the Commissioner of the Washington Supreme Court (3a-8a) is unreported.

JURISDICTION

The Washington Supreme Court's November 6, 2024 order denied Petitioner's request for accommodation under the Americans with Disabilities Act (ADA) and Washington General Rules 33 (GR 33) to permit the late filing of a motion for de novo review of the commissioner's June 10, 2019 ruling. Although the case concluded in 2019, that conclusion was premature due to Petitioner's temporary disability, which

prevented the timely filing of a motion for de novo review guaranteed under Washington Rules of Appellate Procedure 17.7 (RAP 17.7). Petitioner's ADA request sought reasonable accommodation to address this procedural barrier and allow the case to proceed as it would have absent the disability.

The Washington Supreme Court did not question the evidence of Petitioner's disability but nonetheless denied the request for accommodation. However, the November 6, 2024 order included substantive findings, labeling Petitioner's arguments in the motion he sought to file as frivolous and awarding attorney fees to Respondent, underscoring the order's substantive impact on Petitioner's position.

Although the order asserts that the court had previously considered and rejected Petitioner's arguments, the record reflects that only the commissioner had previously rejected these arguments. The November 6, 2024 order is the first time the justices, rather than the commissioner, formally rejected Petitioner's arguments. Therefore, this order represents the final resolution of all state remedies and forms the basis for this Court's jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

Article VI, Clause 2 of the United States Constitution, known as the Supremacy Clause, provides: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

STATEMENT

Petitioner, a lawful permanent resident, and Respondent, an F-1 student visa holder, met in the United States. Their marriage lasted only eight months before they separated and filed for dissolution.

At the outset of the dissolution proceedings, Respondent requested temporary spousal maintenance, citing financial need due to the lack of work authorization as a consequence of her expired immigration status. In her declaration she stated:

> "The fact is that I did have the ability to support myself when I came on a student visa and I was nearly able to continue supporting myself at a minimal level until just a few days ago, when I was barred from working."
>
> (Clerk's Papers (CP), pp. 142–143).

During the hearing on maintenance on November 6, 2015, represented by counsel, Respondent confirmed that her request is predicated exclusively on her immigration circumstances:

> COUNSEL: The request, I wanted to clarify, is until she can work again, not until trial.
>
> THE COURT: She can work soon?
>
> COUNSEL: Provided the immigration service will process her application.
>
> THE COURT: But if they don't, it's not his responsibility, correct?
>
> COUNSEL: Well, the request is until she can work again.
>
> (App. 30a, Ex. 2, Transcript, pp. 16-17)

The commissioner presiding over the maintenance hearing awarded Respondent $2,000 per month in maintenance. This obligation continued for 13 months until Respondent obtained a new work authorization through an immigration self-petition she had filed. The commissioner articulated the guiding principle, stating the following:

> THE COURT: When you are dealing with maintenance and when you're dealing with a short-term marriage and when you're dealing with parties who may or may not work in the United States, it becomes the responsibility of the spouse, no matter how short the marriage is, to carry the responsibility of providing for the spouse rather than the citizens of the state of Washington.
>
> (App. 30a, Ex. 1, Transcript, p. 9).

The trial judge later affirmed the temporary maintenance award, stating:

> "The wife was unable to work because of visa limitations until just before trial. She became eligible, and immediately employed. During the time she was ineligible, from the date of separation until trial, the wife had extreme need for maintenance."
>
> (App. 18a, CP 1235).

Petitioner appealed, arguing that the court improperly relied on "visa limitations" as the sole factor in awarding maintenance:

> "[A]lthough the statutory factors are not exclusive, a trial court cannot rely solely on a non-statutory factor in making a maintenance determination without also fairly considering the

> statutory factors. *In re Marriage of Khan* 182 Wn. App. 795; 332 P.3d 1016 (2014)."
>
> (Appellant's Brief, pp. 7-8).

The Court of Appeals affirmed, stating:

> "Visa limitations relate to the 'financial resources of the party seeking maintenance' under RCW 26.09.090(1)(a). As presented to the trial court, visa limitations inhibited the ability to work, which in turn affected financial resources."
>
> (App. 22a, Opinion, p. 25).

On September 24, 2018, Petitioner filed a "motion to revoke opinion in part" under RAP 2.5(a) which allows an objection to subject matter jurisdiction to be raised at any time. Petitioner argued that federal immigration law preempts state authority in this case:

> "The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens. *Arizona v. United States*, 567 U.S. 387 (2012)
>
> State courts are not allowed to force U.S. residents to pay for an alien's immigration benefits without the sponsor's prior written consent. Title 8 C.F.R. § 213a.2 preempts RCW 26.09.060/090 with respect to visa limitations"
>
> (Motion, pp. 3-4, 5)

The Court of Appeals denied the motion, stating only: "Following consideration of the motion, the panel has determined it should be denied." (App. 14a)

Petitioner then filed a motion for discretionary review in the Washington Supreme Court on November

26, 2018, arguing that immigration is an exclusively federal domain, and that "visa limitations" lie outside state court's subject matter jurisdiction:

> "It is the opinion of the U.S. Supreme Court of the United States in *Arizona v United States* that "States are precluded from regulating conduct in a field that Congress has determined must be regulated by its exclusive governance." The appellate court's opinion encroaches on the federal authority to regulate immigration and status of aliens."
>
> (Motion, pp. 4-5)
>
> "Nothing precludes the court from awarding temporary maintenance based on the history of the marital community. However, the only reason the wife requested temporary maintenance in this case was Employment Authorization Document (EAD), which is federally regulated and applicable only to aliens. The requirement of work authorization is completely eliminated if the alien returns home. Aliens do not have a *right* to be in this country, and are often subject to conditions which may be unacceptable if applied to citizens. *Mathews v. Diaz*, 426 U.S. 67 (1976)
>
> State courts do not have the power to authorize the wife's employment or to order USCIS to issue EAD because such matter is outside of state courts' subject matter jurisdiction. State courts cannot bring this matter within their jurisdiction by declaring "visa limitations" to be a statutory maintenance factor because visas are federally regulated."
>
> (Motion reply, pp. 3, 5)

On February 25, 2019, the commissioner of the Washington Supreme Court denied the motion for discretionary review, finding Petitioner's arguments meritless:

> "As for the substantive basis of the motion, Mr. Pistrak argued for the first time that the Court of Appeals lost subject matter jurisdiction when it considered Ms. Golubeva's immigration status in relation to maintenance. Mr. Pistrak urges that by doing so the court impermissibly intruded into immigration law matters that are exclusively within federal jurisdiction. There is no conflict between federal immigration law and state dissolution law on this issue. *See, e.g., In re Marriage of Khan*, 182 Wn. App. 795, 801-803, 332 P.3d 1016 (2014). Mr. Pistrak's motion to revoke the Court of Appeals decision for lack of jurisdiction is plainly meritless."

(App. 12a-13a, Ruling, p. 3, footnote 2)

Petitioner subsequently filed a motion to modify the commissioner's ruling under RAP 17.7 on March 27, 2019, arguing that an objection to subject matter jurisdiction based on federal preemption is a significant public issue that the court should review:

> "When the issue of subject matter jurisdiction has only been implicitly resolved by virtue of a judgment on the merits and is later raised in the context of an attack on that judgment, the *Restatement (Second) of Judgements* § 12 *(1982)* explains that the interests primarily at stake are not those of the parties, but of the government and society. *Cline v. Cline*, 90 P.3d 147 (Alaska 2004)"

(*Motion*, pp. 8–9).

> "An F-1 student who has completed a course of study and any authorized practical training following completion of studies will be allowed and additional 60-day period to prepare for departure from the United States. 8 C.F.R. § 214.2(f)(5)(iv).
>
> Note that to return to one's home country is not applicable to U.S. citizens and is an option available exclusively to aliens. If the court has jurisdiction to consider the wife's immigration status, it must include the court's power to balance the wife's need to stay without work permit against her ability to leave. An attempt on the part of the state to balance these issues is preempted."
>
> (Motion pp. 13-14)

On June 5, 2019, the Washington Supreme Court granted the motion to modify and referred the case back to the commissioner for further consideration. (App. 9a)

On June 10, 2019, the commissioner issued a second ruling, again denying discretionary review and reiterating:

> "[A]s I explained in my earlier ruling, there is no conflict between federal immigration law and state dissolution law on this issue as it applies to this case. *See, e.g., In re Marriage of Khan*, 182 Wn. App. 795, 801-803, 332 P.3d 1016 (2014). There is no possibility Mr. Pistrak can prevail under this jurisdictional theory. His motion to revoke was plainly frivolous."
>
> (App 5a-6a, Ruling, p. 3).

Due to a temporary disability, Petitioner was unable to file a timely motion to modify this second ruling. On September 11, 2024, Petitioner filed a request for reasonable accommodation under the ADA and GR 33, accompanied by evidence of disability, seeking permission to file the motion late.

The Washington Supreme Court denied the request on November 6, 2024, but nonetheless considered the substance of the intended motion to modify. The motion amplified the issue of federal preemption, arguing that the maintenance order created conflicts with federal law:

> "In *Hoffman Plastic Compounds, Inc. v. NLRB,* 535 U.S. 137 (2002), the Supreme Court held that awarding backpay to unauthorized workers undermines federal immigration policy. This means that without work authorization, wages not only for future work but even for work already performed are not permitted.
>
> Awarding spousal maintenance due to lack of work authorization contradicts federal law by creating a source of income specifically tied to the lack of work authorization, which is exactly the type of income federal law seeks to prohibit.
>
> Additionally, *Hoffman* recognized that work authorization requirements are meant to diminish the attractiveness of illegal immigration. In this case, by awarding maintenance based on unauthorized status, the court is encouraging the wife's continued unauthorized presence in the country by directly financing it."
>
> (Motion, pp. 41-42)

> "The purpose of the I-864 is to ensure that the sponsored immigrant, a foreign national physically present in the United States, does not become a public charge. 8 C.F.R. § 213a.2(a)(2)(i)(B), (b)(1).
>
> The court's maintenance order in this case mirrors the purpose of the federal I-864 Affidavit of Support. It aims to prevent the wife, a foreign national, from becoming a public charge due to her physical presence in the United States without work authorization—a limitation imposed by immigration law.
>
> Maintenance based solely on immigration factors becomes law on the same subject as the federal Affidavit of Support and is therefore preempted. *Arizona v. United States*, 567 U.S. 387 (2012)
>
> The I-864 Affidavit of Support is a voluntary contract, underscoring that the decision to support immigration is fundamentally a choice. In contrast, the court's order imposes this obligation under threat of contempt, creating a conflict with federal law."
>
> (Motion, pp. 43-45)

The court's November 6, 2024 order stated that the court deems Petitioner's arguments frivolous. The order implies that the panel of justices have adopted the commissioner's earlier findings, making them the court's own:

> "[t]he accommodation requested is time to file a reassertion of the same frivolous arguments that have already been addressed and rejected by the court"

(App. 1a)

The justices of the court have never previously addressed or rejected Petitioner's arguments. This order, coupled with the award of fees to Respondent, should be recognized as the court's substantive ruling on the merits of Petitioner's case, rejecting the federal preemption claim. Petitioner has now exhausted state remedies.

REASONS FOR GRANTING THE PETITION

This case presents a novel and unresolved question of federal law concerning the preemptive scope of immigration regulation over state spousal maintenance laws. No court, including this Court, has addressed the issue, underscoring the need for clarification in an area where state courts risk infringing upon exclusive federal authority, warranting review under Supreme Court Rule 10(c).

Petitioner does not challenge maintenance awards to immigrants when based on marital circumstances. However, when maintenance is awarded solely on the basis of immigration circumstances, with the intent to alleviate those circumstances, it exceeds the bounds of family law and encroaches upon the exclusive federal domain of immigration law.

Petitioner's intent is to declare the initial maintenance order void as entered by a court lacking the jurisdiction over the subject matter. The objection to subject matter jurisdiction of the Washington court is supported by the language in *Marriage of Brown*, 98 Wn. 2d 46, 98 Wash. 2d 46, 653 P.2d 602 (Wash. 1982), which states:

> "We believe the appropriate test to be followed in contesting subject matter jurisdiction

is set forth in *Restatement (Second) of Judgments* § 12 (1982):

> When a court has rendered a judgment in a contested action, the judgment precludes the parties from litigating the question of the court's subject matter jurisdiction in subsequent litigation except if:
>
> (1) The subject matter of the action was so plainly beyond the court's jurisdiction that its entertaining the action was a manifest abuse of authority; or
>
> (2) Allowing the judgment to stand would substantially infringe the authority of another tribunal or agency of government; or
>
> (3) The judgment was rendered by a court lacking capability to make an adequately informed determination of a question concerning its own jurisdiction and as a matter of procedural fairness the party seeking to avoid the judgment should have opportunity belatedly to attack the court's subject matter jurisdiction."
>
> (March 27, 2019 Motion, pp. 7-8)

Petitioner asserts that these exceptions apply to his case. Most notably, under exception (2), the state court's order for maintenance based on lack of work authorization infringes upon the authority of the federal government which has exclusive jurisdiction over immigration matters. The *Restatement (Second) of Judgments* § 12, *Comment* (d), explains that these exceptions are designed to protect the interests of the government and society, rather than those of the parties. Accordingly, this case can be analyzed from these two complementary perspectives.

From the perspective of the federal government, immigration law exclusively regulates the conditions under which foreign nationals may remain in the United States. Respondent's lack of work authorization was a direct result of her expired immigration status and unlawful presence. Congress intended the work authorization requirement to deter unlawful presence, prohibiting employment of unauthorized aliens to reduce the economic incentives of illegal immigration. The state court's maintenance order directly interfered with this congressional intent by alleviating the economic consequences of Respondent's lack of work authorization. In doing so, the court undermined federal immigration objectives by compelling Petitioner to provide financial support in lieu of work authorization to sustain Respondent's continued unlawful presence.

From the perspective of society, immigration sponsorship is a voluntary act tied to the federal immigration system. Under the federal family-based immigration scheme, sponsors must sign an Affidavit of Support, binding themselves to provide financial support to the sponsored immigrant. Petitioner, however, did not sponsor Respondent's immigration, yet the state court imposed financial obligations tied solely to Respondent's presence in the United States as a foreign national. The maintenance order, enforceable through contempt and deprivation of liberty, conflicts with federal immigration law, which emphasizes the voluntary nature of such sponsorship.

Although the Washington court characterized Petitioner's arguments as frivolous, the court specifically applied the "debatable issue" standard. The commissioner stated:

> "A matter is frivolous if, considering the entire record, the court determines that the proponent has presented no debatable issues upon which reasonable minds might differ, and the action is so devoid of merit that there is no possibility of reversal. *Tiffany Family Trust Corp. v. City of Kent*, 155 Wn.2d 225, 241, 119 P.3d 325 (2005)".
>
> (App 5a)

Taken together with the commissioner's statement—"There is no conflict between federal immigration law and state dissolution law on this issue. *See, e.g., In re Marriage of Khan*, 182 Wn. App. 795, 801–803, 332 P.3d 1016 (2014)"—it is evident that the court deemed Petitioner's arguments frivolous because *Khan* is considered controlling precedent, and the court saw no reason to revisit it.

The commissioner's assertion that "there is no conflict between immigration law and state dissolution law" is a quote from *Khan*. However, in *Khan*, the term "conflict" referred to the trial court's perceived conflict between the husband's I-864 contractual support obligations and the finding that maintenance was not warranted under state law.

Khan did not focus on immigration issues or the preemptive nature of federal immigration law; rather, its focus was on the manner of enforcement of the I-864 contract, irrespective of its immigration context. In contrast, Petitioner's case involves awarding maintenance based solely on immigration-related factors in the absence of an I-864 contract. Accordingly, the commissioner's reliance on *Khan* does not provide a basis for deeming Petitioner's arguments frivolous.

Petitioner's argument relies principally on the *Restatement (Second) of Judgements* § 12 (1982) and *Arizona v. United States*, 567 U.S. 387 (2012).

The *Restatement* supports raising an objection to Washington court's subject matter jurisdiction based on federal preemption at any time. Chapter 69, *Comment* (c) provides that relief from a judgement should be granted in nearly all circumstances where the conditions outlined in § 12 are met, and a delay in seeking such relief does not justify denial.

Arizona establishes that the federal government has exclusive jurisdiction over immigration matters, ensuring the uniform application of immigration laws and preventing a patchwork of conflicting state laws. This reasoning is particularly relevant to Petitioner's case, as maintenance laws vary significantly by state. Petitioner's case demonstrates that an immigrant in Washington may expect to receive maintenance based on immigration status alone, while an immigrant in identical circumstances residing in another state may not receive the same outcome. This situation directly undermines the intent of maintaining uniform conditions of presence for aliens.

The Washington court's position, as evidenced by its decisions, effectively treats "visa limitations" as unquestionably a valid factor for awarding spousal maintenance. This reflects the view that immigration circumstances fall within the subject matter jurisdiction of state family courts, permitting the application of maintenance laws to create immigration-based rights and obligations that do not exist under federal law.

Petitioner's case arises from a dissolution of marriage with no children involving an unauthorized immigrant who is physically able to work. Based on the

statistics collected by the Migration Policy Institute (MPI) in the "*Profile of the Unauthorized Population*" report compiled for the years 2015-2019[1], and the annual divorce rate, we can roughly estimate the number of similar cases per year.

The 2016 Census Bureau report "*Number, Timing, and Duration of Marriages and Divorces*"[2], provides that in 2016 the divorce rate was 8 per 1000 population. The report also provides that 36.4 percent of native-born persons were ever divorced compared to only 20.3 percent of foreign-born persons (20.3 / 36.4 = 0.56). Factoring this in, the estimated divorce rate for foreign-born persons in 2016 is 8 * 0.56 = 4.48 per 1,000 population.

The MPI report provides the following data:

Unauthorized Population	**Estimates**	**% of Total**
Total	11,047,000	100%
Age 25-54	7,842,000	70%
Married USC/LPR	1,968,000	18%
No children	6,185,000	55%
Employed	6,829,000	62%

We can roughly estimate the annual number of cases similar to Petitioner's using the following formula:

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[1] https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US

[2] https://www.census.gov/newsroom/press-releases/2021/marriages-and-divorces.html

Cases/Year = *total* * *adults* * *married* * *no_children* * *employed* * *divorce_rate* = 11,047,000 * 0.7 * 0.18 * 0.55 * 0.62 * (4.48/1000) = **2126.41**

This imperfect estimation highlights the potential magnitude of this federal question as a matter of public concern. The involuntary financial obligations that state courts may impose on Americans based solely on an alien's immigration status—and the resulting interference with conditions of presence, potentially enabling and incentivizing unlawful presence—are in clear conflict with federal immigration regulations. Given the significant federal interests at stake and the absence of precedent, this Court's intervention is necessary.

CONCLUSION

Based on the foregoing, the petition for a writ for certiorari should be granted.

Respectfully submitted.

Evgeny Pistrak,
Petitioner, pro se.

February 2025.

APPENDIX A – Order of the Washington Supreme Court, Filed November 6, 2024

THE SUPREME COURT OF WASHINGTON

In re the Marriage of: KSENIIA GOLUBEVA, Respondent, and EVGENY PISTRAK, Petitioner.	No. 103460-1 **O R D E R** Court of Appeals No. 76373-3-I

Department II of the Court, composed of Chief Justice González and Justices Madsen, Stephens, Yu and Whitener, considered this matter at its November 5, 2024, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's request for GR 33 accommodations is denied under GR33(c)(2)(B) because the proceeding cannot be continued without signification prejudice to the Respondent. Petitioner seeks an accommodation five years after the ruling denying discretionary review. The request is not reasonable and he does not adequately explain why he waited for four years after returning to the United States to file the motion. Furthermore, the accommodation requested is time to file a reassertion of the same frivolous arguments that have already been addressed and rejected by the court. The motion for extension of time to file a motion to modify the Commissioner's ruling is denied. The motion to modify is part of a frivolous appeal and

evidence of ongoing intransigence in this domestic relations case. The Respondent's request for attorney fees is granted.

DATED at Olympia, Washington, this 6th day of November, 2024.

For the Court

s/ Chief Justice

APPENDIX B - Order of the Commissioner of the Washington Supreme Court, Filed June 10, 2019

THE SUPREME COURT OF WASHINGTON

In re the Marriage of: KSENIIA GOLUBEVA, Respondent, and EVGENY PISTRAK, Petitioner.	No. 9 6 7 5 2 - 1 Court of Appeals No. 76373-3-I RULING DENYING REVIEW

Pro se petitioner Evgeny Pistrak seeks discretionary review of an order by Division One of the Court of Appeals denying his motion to "revoke" its unpublished decision affirming a temporary maintenance award as part of a marriage dissolution. I initially denied review and imposed sanctions in a ruling issued on February 25, 2019. On June 4, 2019, Department One of this court granted Mr. Pistrak's motion to modify my ruling and referred the matter back to me for further consideration in light of arguments Mr. Pistrak made in his motion to modify. Having done so, I adhere to the results of my original ruling, as explained below.

To recap, Mr. Pistrak and Ksenia Golubeva dissolved their marriage. The superior court awarded Ms. Golubeva $8,000 in unpaid temporary maintenance. Mr. Pistrak appealed, but the Court of Appeals affirmed and awarded Ms. Golubeva attorney fees on appeal. The court denied Mr. Pistrak's motion for

reconsideration on August 20, 2018. Mr. Pistrak did not file a petition for review in this court. The Court of Appeals issued its mandate on September 28, 2018. On January 23, 2019, the Court of Appeals denied Mr. Pistrak's motion to recall the mandate. *See* RAP 12.9.

Meanwhile, on August 13, 2018, Mr. Pistrak filed in the Court of Appeals a purported "Motion to Dismiss Golubeva for Want of Jurisdiction Re: Temporary Order." At the direction of the panel, the court's administrator/clerk informed Mr. Pistrak that the motion was not proper and therefore would be placed in the file without any further action. On August 22, 2018, a panel of judges denied Mr. Pistrak 's motion to modify the administrator/clerk's ruling.

Then, on September 24, 2018, four days before the mandate issued, Mr. Pistrak filed a motion in the Court of Appeals to "revoke" the Court of Appeals decision on appeal for an alleged lack of subject matter jurisdiction. The clerk/administrator at first declined to act on the motion, reasoning that it was analogous to an improper second motion for reconsideration. But a panel of judges later considered the motion and denied it on October 23, 2018, after the mandate issued.

On November 26, 2018, Mr. Pistrak filed a pleading in this court styled a petition for review, challenging denial of his motion to revoke the Court of Appeals decision. The clerk's office reclassified the pleading as a motion for discretionary review. RAP 13.3(a)(2), (c), (e). Ms. Golubeva filed an answer opposing review and requested attorney fees alternatively under RAP 18.10) and RAP 18.9.

In my earlier ruling, I stated that Mr. Pistrak filed his motion to revoke after the Court of Appeals had issued its mandate, and therefore, the Court of Appeals properly denied the motion because it lost its

power to change its decision unless the mandate was recalled. *See* RAP 12.7(a), (b); RAP 12.9. In fact, Mr. Pistrak filed his motion four days *before* the Court of Appeals issued its mandate. The Court of Appeals then denied the motion more than three weeks after it issued its mandate.

The Court of Appeals did not lose all power and authority to act on Mr. Pistrak's motion after it issued the mandate. As indicated, Mr. Pistrak asked the Court of Appeals to revoke its decision. By the time the Court of Appeals denied Mr. Pistrak's motion, it had issued its mandate, but denial of the motion did not "change or modify" the Court of Appeals decision Mr. Pistrak sought to revoke. RAP 12.7(a). Stated another way, a Court of Appeals case does not disappear when that court issues its mandate. Though under RAP 12.7(a) the Court of Appeals may not change or modify its decision absent withdrawal of the mandate the court retains at least the power and authority to dispose of frivolous motions, including motions filed, but not acted upon, before the mandate issued. *See* RCW 2.06.030.

A matter is frivolous if, considering the entire record, the court determines that the proponent has presented no debatable issues upon which reasonable minds might differ, and the action is so devoid of merit that there is no possibility of reversal. *Tiffany Family Trust Corp. v. City of Kent,* 155 Wn.2d 225, 241, 119 P.3d 325 (2005). In this instance, Mr. Pistrak argued in his motion to revoke that the Court of Appeals lost subject matter jurisdiction over this marital dissolution matter when it considered Ms. Golubeva's immigration status in relation to maintenance. But as I explained in my earlier ruling, there is no conflict between federal immigration law and state dissolution law on this issue as it applies to this case. *See, e.g., In*

re Marriage of Khan, 182 Wn. App. 795, 801-803, 332 P.3d 1016 (2014). There is no possibility Mr. Pistrak can prevail under this jurisdictional theory. His motion to revoke was plainly frivolous.

As discussed in my earlier ruling, to obtain discretionary review in this court, Mr. Pistrak must demonstrate that the Court of Appeals (1) committed an obvious error that renders further proceedings useless; (2) committed probable error that substantially alters the status quo or substantially limits his freedom to act; or (3) so far departed from the usual and accepted course of judicial proceedings, or so far sanctioned such a departure by the superior court, as to call for review by this court. RAP 13.5(b).

The Court of Appeals commits "obvious error" under RAP 13.S(b)(l) when its decision is clearly contrary to statutory or decisional authority with no discretion involved. *See* I Washington Appellate Practice Deskbook, § 4.4(2)(a) at 4-34-4-35 (4th ed. 2016). The error also must render further proceedings "useless." *See id.* at 4-36. Or stated more simply, the court "made a plain error of law that markedly affects the course of the proceedings." II Washington Appellate Practice Deskbook, § 18.3 at 18-14 (4th ed. 2016). One could argue that the Court of Appeals should have waited to issue the mandate until after it acted on Mr. Pistrak's motion. But since the motion to revoke was filed only four days before the mandate issued, and the clerk/administrator initially declined to act on the motion, it is difficult to see how this situation could have been avoided. In any event, since the Court of Appeals decision on Mr. Pistrak's motion to revoke did not change or modify the Court of Appeals decision with the meaning of RAP 12.7(a), there is no "obvious" error within the meaning of RAP 13.5(b)(l), particularly when the motion to revoke was frivolous.

Even if the Court of Appeals committed probable error (which I need not decide), the error did not alter the status quo or substantially limit Mr. Pistrak's freedom to act for purposes of RAP 13.5(b)(2). The status quo remained unchanged and whatever effect the decision had was limited to the related litigation. *See* Geoffrey Crooks, *Discretionary Review of Trial Court Decisions Under the Washington Rules of Appellate Procedure,* 61 WASH. L. REV., 1541, 1546 (1986) (interpreting meaning of "probable error" standard); *see also State* v. *Howland,* 180 Wn. App. 196,207, 321 P.3d 303 (2014) (interpreting probable error standard under RAP 2.3(b)(2)).

Furthermore, while the timing of the Court of Appeals denial of Mr. Pistrak's motion to revoke was somewhat unusual in relation to the timing of the mandate, the seeming deviation in judicial procedure was too slight to justify this court's intervention under RAP 13.5(b)(3). Stated another way, it would not be a good use of judicial resources to force the Court of Appeals to recall the mandate for the sole purpose of reexamining a frivolous motion. As indicated, the Court of Appeals has already denied Mr. Pistrak's motion to recall the mandate (a matter that is not presently before me). In sum, Mr. Pistrak not only fails to show that discretionary review is warranted, his motion for discretionary review is frivolous.

Moving on, the order granting Mr. Pistrak's motion to modify encompasses my earlier ruling granting Ms. Golubeva reasonable attorney fees and costs. Having reviewed the record and briefing again, I still conclude that Mr. Pistrak's motion for discretionary review is subject to sanctions because (1) it is frivolous in that there is no reasonable possibility of obtaining discretionary review of the Court of Appeals order denying Mr. Pistrak's motion to revoke, and (2) Mr.

Pistrak's pleadings in this court reflect a vexatious pattern of litigation conduct clearly intended to delay finality of the underlying dissolution matter. RAP 18.9(a). But in recognition of Mr. Pistrak's successful motion to modify, I will limit the sanction to reasonable attorney fees and costs incurred prior to February 25, 2019, the date of my earlier ruling. Accordingly, with that limitation, I adhere to my earlier ruling directing Mr. Pistrak is to pay Ms. Golubeva's reasonable attorney fees and costs incurred in answering his frivolous motion for discretionary review.

The motion for discretionary review is denied and sanctions are imposed.

s/ COMMISSIONER

June 10, 2019

APPENDIX C - Order of the Washington Supreme Court, Filed June 5, 2019

THE SUPREME COURT OF WASHINGTON

In re the Marriage of: KSENIIA GOLUBEVA, Respondent, and EVGENY PISTRAK, Petitioner.	No. 96752-1 **ORDER** Court of Appeals No. 76373-3-1

Department I of the Court, composed of Chief Justice Fairhurst and Justices Johnson, Owens, Wiggins and Gordon McCloud, considered this matter at its June 4, 2019, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's motion to modify the Commissioner's ruling is granted and the case is referred back to the Supreme Court Commissioner for further consideration in light of the arguments made by the Petitioner in the motion to modify.

DATED at Olympia, Washington, this 5th day of June, 2019.

For the Court

s/ CHIEF JUSTICE

APPENDIX D - Order of the Commissioner of the Washington Supreme Court, Filed February 25, 2019

THE SUPREME COURT OF WASHINGTON

In re the Marriage of: KSENIIA GOLUBEVA, Respondent, and EVGENY PISTRAK, Petitioner.	No. 9 6 7 5 2 - 1 Court of Appeals No. 76373-3-I RULING DENYING REVIEW

Pro se petitioner Evgeny Pistrak seeks discretionary review of an order by Division One of the Court of Appeals denying his motion to "revoke" its unpublished decision affirming a temporary maintenance award as part of a marriage dissolution. Because Mr. Pistrak fails to identify any tenable basis for further review of the order denying his motion to revoke, the motion for discretionary review is denied, as explained below. Sanctions are imposed also for filing a frivolous motion intended for delay.

Mr. Pistrak and Ksenia Golubeva dissolved their marriage. The superior court awarded Ms. Golubeva $8,000 in unpaid temporary maintenance. Mr. Pistrak appealed, but the Court of Appeals affirmed and awarded Ms. Golubeva attorney fees on appeal. The court denied Mr. Pistrak's motion for reconsideration on August 20, 2018. Mr. Pistrak did not file a petition for review in this court. The Court of Appeals issued its mandate on September 28, 2018.

Meanwhile, on August 13, 2018, Mr. Pistrak filed in the Court of Appeals a purported "Motion to Dismiss Golubeva for Want of Jurisdiction Re: Temporary Order." At the direction of the panel, the court's administrator/clerk informed Mr. Pistrak that the motion was not proper and therefore would be placed in the file without any further action. On August 22, 2018, a panel of judges denied Mr. Pistrak's motion to modify the administrator/clerk's ruling.

Then, on September 24, 2018, Mr. Pistrak filed a motion in the Court of Appeals to "revoke" the Court of Appeals decision on appeal for an alleged lack of subject matter jurisdiction. The clerk/administrator at first declined to act on the motion, reasoning that it was analogous to an improper second motion for reconsideration. But a panel of judges later considered the motion and denied it on October 23, 2018.

On November 26, 2018, Mr. Pistrak filed a pleading in this court styled a petition for review, challenging denial of his motion to revoke the Court of Appeals decision. The clerk's office reclassified the pleading as a motion for discretionary review. RAP 13.3(a)(2), (c), (e). Ms. Golubeva filed an answer opposing review and requested attorney fees alternatively under RAP 18.1(j) and RAP 18.9.

Mr. Pistrak argues that this court's review is justified because he is raising a significant question of law under the Washington or United States constitutions and because this case involves an issue of substantial public interest. RAP 13.4(b)(3), (4). He relies on the wrong criteria. This is not a petition for review of a Court of Appeals decision terminating review. RAP 12.3(a); RAP 13.3(b); RAP 13.4(a). Rather, as indicated above, Mr. Pistrak seeks discretionary review of a Court of Appeals interlocutory decision. RAP

12.3(b); RAP 13.3(a)(2), (c), (e); RAP 13.5(a). To obtain review of such a decision, Mr. Pistrak must demonstrate that the Court of Appeals (1) committed an obvious error that renders further proceedings useless; (2) committed probable error that substantially alters the status quo or substantially limits his freedom to act; or (3) so far departed from the usual and accepted course of judicial proceedings, or so far sanctioned such a departure by the superior court, as to call for review by this court. RAP 13.5(b). Mr. Pistrak fails to meaningfully discuss these criteria, much less show that any of them applies in this instance.

The Court of Appeals has issued its mandate for its decision on the merits of Mr. Pistrak's appeal. RAP 12.5(b). The decision is therefore final. RAP 12.5(a). Neither the Court of Appeals nor this court has the power to change the Court of Appeals decision unless the mandate has been recalled. RAP 12.7(a), (b). The mandate had not been recalled when Mr. Pistrak filed the instant motion to "revoke" the Court of Appeals decision.[3] The Court of Appeals therefore correctly denied Mr. Pistrak's motion to revoke its decision as improper.[4] There is no obvious or probable error or a

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[3] Mr. Pistrak later filed a motion in the Court of Appeals to recall the mandate. RAP 12.9. The Court of Appeals denied the motion on January 23, 2019. That interlocutory decision is not presently before me.

[4] As for the substantive basis of the motion, Mr. Pistrak argued for the first time that the Court of Appeals lost subject matter jurisdiction when it considered Ms. Golubeva's immigration status in relation to maintenance. Mr. Pistrak urges that by doing so the court impermissibly intruded into immigration law matters that are exclusively within federal jurisdiction. There is no conflict between federal immigration law and state dissolution law on this issue. See, e.g., In re Marriage of Khan, 182 Wn. App. 795, 801-803, 332 P. 3d 1016 (2014). Mr. Pistrak's motion to

departure from the accepted and usual course of judicial proceedings within the meaning of RAP 13.5(b). Mr. Pistrak's motion for discretionary review necessarily fails.

As indicated, Ms. Golubeva requests attorney fees, either under RAP 18.1(j) by analogy or under RAP 18.9. The former rule applies only where the respondent has filed an answer to a petition for review of a Court of Appeals decision that awarded attorney fees to the prevailing party. RAP 18.1(j). The rule does not apply in this instance. If it could be applied by analogy, and I am not deciding that it can, the Court of Appeals did not award Ms. Golubeva fees when it denied Mr. Pistrak's motion to revoke for lack of jurisdiction. Therefore, RAP 18.1(j) is not a proper basis for attorney fees.

On the other hand, I agree that Mr. Pistrak's motion for discretionary review is subject to sanctions as frivolous, as there is no reasonable possibility of obtaining discretionary review, and it is clearly intended to delay finality of the underlying proceedings. RAP l8.9(a). Accordingly, Mr. Pistrak is directed to pay Ms. Golubeva's reasonable atto1ney fees and expenses incurred in answering his frivolous motion for discretionary review, provided Ms. Golubeva timely submits an affidavit of fees and expenses in accordance with RAP 18.l(d).

The motion for discretionary review is denied and sanctions are imposed.

s/ COMMISSIONER

February 25, 2019

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revoke the Court of Appeals decision for lack of jurisdiction is plainly meritless.

APPENDIX E - Order of the Washington Court of Appeals, Filed October 23, 2018

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

In the Matter of the Marriage of: KSENIIA GOLUBEVA, Respondent, and EVGENY PISTRAK, Appellant.	No. 76373-3-I ORDER DENYING MOTION TO REVOKE OPINION FOR LACK OF SUBJECT MATTER JURISDICTION

Appellant filed a motion to revoke opinion for lack of subject matter jurisdiction on September 24, 2018. Following consideration of the motion, the panel has determined it should be denied.

Now, therefore, it is hereby

ORDERED that appellant's motion to revoke opinion for lack of subject matter jurisdiction is denied.

FOR THE PANEL:

s/ James R. Verellen

APPENDIX F - Opinion of the Washington Court of Appeals, Filed July 23, 2018

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

In the Matter of the Marriage of: KSENIIA GOLUBEVA, Respondent, and EVGENY PISTRAK, Appellant.	No. 76373-3-I UNPUBLISHED OPINION FILED: July 23, 2018

VERELLEN, J. -When the court dissolved Kseniia Golubeva and Evgeny Pistrak's marriage, it awarded Golubeva $8,000 for unpaid temporary maintenance. In challenging this judgment, Pistrak does not point to any specific factors or material evidence the court improperly disregarded. Pistrak fails to show the trial court abused its discretion when it entered judgment for the unpaid maintenance. And substantial evidence supports the court's finding of Pistrak's ability to pay because the court had evidence of Pistrak's income and debt obligations.

The court also awarded Golubeva $20,000 in attorney fees and costs. The court did not enter specific findings supporting the time incurred or the hourly rate charged. Because the court did not enter adequate findings to explain the award of attorney fees and costs, we remand for additional findings.

When the court held a hearing to issue its oral ruling, Pistrak indicated he could not understand the proceeding without an interpreter. In the findings, the court did not find it credible that Pistrak was unable to understand even the basic preliminary comments by the court. Pistrak fails to provide any basis for relief given the fact the court ended the hearing after he objected and entered the decree and findings in writing.

Therefore, we affirm the judgment for unpaid temporary maintenance. As to the attorney fees award, we remand for further proceedings on the existing record consistent with this opinion.

FACTS

Pistrak and Golubeva were married on September 19, 2014. They separated on May 20, 2015.

On November 16, 2015, the court ordered Pistrak to pay Golubeva $2,000 per month in temporary maintenance. Between November 2015 and 2016, Pistrak brought numerous motions to revoke or modify the temporary maintenance. Also during that time, the court held Pistrak in contempt multiple times for failing to pay.'

Trial occurred between November 7, 2016 and November 10, 2016. On November 18, 2016, the court held a hearing to issue its findings and conclusions. When Pistrak indicated he could not understand the proceeding without an interpreter, the court ended the hearing and later entered its written order.

In the dissolution decree and findings of fact and conclusions of law, the court awarded Golubeva $8,000 for unpaid temporary maintenance and $20,000 in attorney fees and costs.

Pistrak appeals.

ANALYSYS

I. Temporary Maintenance

Pistrak challenges the trial court's $8,000 judgment to Golubeva for unpaid temporary maintenance.

As a threshold matter, Golubeva argues Pistrak failed to preserve this issue.

In November 2015, Pistrak challenged Golubeva's original request for temporary maintenance. Between November 2015 and 2016, Pistrak brought numerous motions to revoke or modify the temporary maintenance. Also during that time, the court held Pistrak in contempt multiple times for failing to pay.

In July 2016, the commissioner reserved the issue of July maintenance for the trial judge because, at the time, trial was scheduled for August. The trial was ultimately continued until November 2016. In October 2016, the commissioner entered an order finding Pistrak in contempt for failing to pay temporary maintenance. The commissioner reaffirmed the reservation of the July maintenance for the trial judge and entered a $6,000 judgment against Pistrak for unpaid maintenance between August 2016 and October 2016. The commissioner reserved review of the contempt order for the trial judge.

Trial started on November 7, 2016. At trial, Pistrak again challenged the temporary maintenance.

> [W]hen there was a hearing in July, [the commissioner] ... ordered that all the maintenance money could be-or should be relitigated or reconsidered at trial. So my request to the court is to reconsider the maintenance issue in

> such a way that I do not owe her any maintenance starting from the time of that hearing in July. The reason for that being that Golubeva is a healthy person. She has a work authorization. And .. . as she told us ... her new job is in the same profession as before. And she, in fact, even has been promoted ... :. And also the fact is that I already had paid enough, a lot. under the temporary maintenance order. I already paid $18,000. That should · be perfectly sufficient.
>
> Also, I would like to draw the court's attention to the fact that the reason she was awarded maintenance in the first place was her immigration status. So, that's why I'm asking that the court not award any future maintenance from now on, neither retroactively.[1]

On November 18, 2017, when the court entered the decree and findings, the court awarded Golubeva $8,000 for unpaid maintenance between July 2016 and October 2016.

> The wife was unable to work because of visa limitations until just before trial. She became eligible, and immediately employed. During the time she was ineligible, from the date of separation until trial, the wife had extreme need for maintenance, and the husband had the ability to pay .... The wife no longer has the need for maintenance, but the temporary maintenance is confirmed, and will be made a judgment to the extent the husband has not paid (he has not

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[1] Report of Proceedings (RP) (Nov. 10, 2016) at 509-10.

paid any maintenance for the past four months, in violation of the court's orders).[2]

Golubeva offers two preservation arguments, but they are not persuasive. First, Golubeva claims Pistrak's arguments before this court rely on documents that were filed in the case but not admitted at trial. But the trial court was aware of the filings related to the temporary maintenance order when it ruled on Pistrak's multiple motions to revoke and modify the commissioner's orders. And during the trial, the court indicated that documents filed in the case did not need to be admitted as exhibits.[3]

Second, Golubeva contends, "Having failed to challenge the Temporary Order at trial or to appeal it, Pistrak cannot challenge his duty to pay temporary maintenance."[4] But under RAP 2.4, "an appeal from the final judgment brings up for review most orders and rulings made pretrial and during trial."[5] And on November 4, 2016, when the trial court denied Pistrak's last motion for revision of the temporary maintenance order, the court stated the denial "does not preclude Mr. Pistrak from arguing at trial the appropriate amount or duration of maintenance."[6] And as

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[2] Clerk's Papers (CP) at 3271.

[3] See RP (Nov. 7, 2016) at 108 ("[T]he financial declaration is already filed in the court file. [T]here's no need to admit it as an exhibit. So, I won't admit it, but you could certainly refer to it and utilize it."); see also RAP 9.1 ("The 'record on review' may consistent of ... 'clerk's papers' .... The clerk's papers include the pleadings, orders, and other papers filed with the clerk of the trial court.").

[4] Resp't's Br. at 14.

[5] Wlasiuk v. Whirlpool Corp., 76 Wn. App. 250,259,884 P.2d 13 (1994)

[6] CP at 1964

previously discussed, Pistrak did challenge the temporary maintenance order at trial.

We conclude Pistrak has preserved his arguments concerning temporary maintenance.

As to the merits of the temporary maintenance, Pistrak claims the trial court abused its discretion because it did not consider all the statutory factors under RCW 26.09.090 when entering judgment for the previously unpaid temporary maintenance.

"We review a trial court's award of maintenance for abuse of discretion."[7] "Trial court decisions in a dissolution action will seldom be changed upon appeal the spouse who challenges such decisions bears the heavy burden of showing a manifest abuse of discretion on the part of the trial court."[8] The trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons.[9]

> A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do

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[7] In re Marriage of Valente, 179 Wn. App. 817, 822, 320 P.3d 115 (2014) (quoting In re Marriage of Mueller, 140 Wn. App. 498, 510, 167 P.3d 568 (2007)).

[8] In re Marriage of Bowen, 168 Wn. App. 581,586,279 P.3d 885 (2012) (quoting In re Marriage of Landry. 103 Wn. 2d 807, 809-10, 699 P.2d 214 (1985)).

[9] Id.

not meet the requirements of the correct standard.[10]

An award of temporary maintenance is governed by RCW 26.09.060, which provides, "The court may issue ... an order for temporary maintenance or support in such amounts and on such terms as are just and proper in the circumstances."[11]

RCW 26.09.090 addresses an award of maintenance after the court dissolves the marriage.

> (1) ... The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to misconduct, after considering all relevant factors including but not limited to:
>
> (a) The financial resources of the party seeking maintenance . . .;
>
> (b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skills, interests, style of life, and other attendant circumstances;
>
> (c) The standard of living established during the marriage or domestic partnership;
>
> (d) The duration of the marriage or domestic partnership;
>
> (e) The age, physical and emotion condition, and financial obligations of the spouse or domestic partner seeking maintenance; and

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[10] In re Marriage of Littlefield, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).

[11] RCW 26.09.060(6).

> (f) The ability of the spouse or domestic partner from whom · maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse or domestic partner seeking maintenance.

Pistrak provides no authority that a temporary maintenance award requires findings as to each of the statutory factors governing post-decree maintenance. Golubeva contends the court properly applied the temporary maintenance statute. "While temporary maintenance is certainly not based upon the question of whether maintenance will be continued past the entry of the decree, temporary maintenance cannot be adjudged in a vacuum without reference to post-decree maintenance factors."[12]

Although Pistrak is correct that the trial court should look to the factors under RCW 26.09.090, he fails to point to any specific factors or material evidence the court improperly disregarded.

Pistrak claims the trial court improperly considered Golubeva's visa work limitations. But Golubeva's visa limitations relate to the "financial resources of the party seeking maintenance" under RCW 26.09.090(1)(a). As presented to the trial court, Golubeva's visa limitations inhibited her ability to work, which in turn affected her financial resources. This is reflected in the trial court's finding that Golubeva "no longer has the need for maintenance,"[13] because the visa limitations ended and she found employment.

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[12] 19 SCOTT J. HORENSTEIN, WASHINGTON PRACTICE: FAMILY AND COMMUNITY PROPERTY LAW§ 26.2 at 656 (2nd ed. 2017).

[13] CP at 3271.

Pistrak also argues substantial evidence did not support the trial court's finding of his ability to pay.

When reviewing findings of fact made by a trial judge, we apply the substantial evidence standard.[14] "'Substantial evidence exists if the record contains evidence of a sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise."[15]

In the findings of fact and conclusions of law, the trial court found Pistrak had the ability to pay.[16] Pistrak argues the trial court "focus[ed] on the husband's gross yearly income without a fair consideration of the money actually available to him."[17] But the record before this court indicates that the trial court was well aware of the parties' financial situation. The trial court had Pistrak's pay stubs for May 2016 through September 2016, which indicated he was earning $135,000 per year.

During trial, Pistrak testified that his credit card debt was around $35,000. Pistrak's testimony is supported by his December 2016 credit card statement, which shows his balance was $35,869.31. But the trial court also had Pistrak's credit card statements for June 2016 through October 2016, and those

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[14] In re Marriage of Rockwell, 141 Wn. App. 235, 242, 170 P.3d 572 (2007).

[15] Id. (quoting In re Marriage of Griswold, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002)).

[16] CP at 3271 ("The husband makes $135,000 per year. He claims throughout the pretrial hearings on temporary maintenance, and during trial, that he is unable to pay the modest $2,000 in maintenance were not supported by the evidence.").

[17] But the record before this court indicates that the trial court was well aware of the parties' financial situation. The trial court had Pistrak's pay stubs for May 2016 through September 2016, which indicated he was earning $135,000 per year.

statements show that prior to December 2016, Pistrak's debt was much lower and he was making significant payments on the card.[18]

We conclude substantial evidence supports the trial court's finding of Pistrak's ability to pay, and the trial court did not abuse its discretion when it entered judgment for the unpaid temporary maintenance.

II. Attorney Fees

Pistrak contends the trial court failed to enter sufficient findings and conclusions to support its award of fees to Golubeva.

We review a trial court's determination of reasonableness of attorney fees for abuse of discretion.[19] To determine a reasonable attorney fee, the court "begins with a calculation of the 'lodestar,' which is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate."[20] The court must also segregate and "discount hours spent on unsuccessful claims, duplicated effort, or otherwise unproductive time."[21] The party requesting the fee must provide reasonable documentation of the work

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[18] In May 2016, Pistrak's credit card balance was $2,824.63 and he made a payment of $3,500. In June 2016, Pistrak's balance was $1,396.56 and he made a payment of $7,899.57. In July 2016, Pistrak's balance was $15,759.17 and he made a payment of $15,506.82. In August 2016, Pistrak's balance was $9,247.58 and he made a payment of $14, 151.11. And in September 2016, Pistrak's balance was $21,389.96 and he made a payment of $2,949.99.

[19] Berryman v. Metcalf, 177 Wn. App. 644, 656-57, 312 P.3d 745 (2013).

[20] Id.

[21] Bowers v. Transamerica Title Ins. Co., 100 Wn.2d 581,597,675 P.2d 192 (1983).

performed.[22] But the court must conduct an independent "evaluation of the reasonableness of the fees" and cannot simply rely on the billing records and pleadings of the prevailing party.[23] "[M]eaningful findings and conclusions must be entered to explain an award of attorney fees."[24] "The findings must show how the court resolved disputed issues of fact and the conclusions must explain the court's analysis."[25]

The declaration provided by Golubeva's counsel provided an adequate basis for a lodestar determination; notably, a description of counsel's qualifications, experience, and background, a description of the services provided, and the basis for the claimed hourly rate. The declaration also provided sufficient context to analyze other factors, including the complexity of the matter, the intransigence of Pistrak, and the history of previously awarded but unpaid fees.

But the court did not enter adequate findings. It awarded $20,000, stating:

> Petitioner incurred fees and costs, and needs help to pay those fees and costs. The other spouse has the ability to help pay fees and costs and should be ordered to pay the amount as listed in the final order. The court finds that this amount of $20,000 ordered is reasonable. The petitioner requested in excess of $33,000 in attorney's fees. This should have been a very straight forward case. The parties were married for only eight months, there are no children of the marriage, and the only real asset was the

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[22] 224 Westlake, LLC v. Engstrom Props., LLC, 169 Wri. App. 700,734,281 P.3d 693 (2012).

[23] Berryman, 177 Wn. App. at 677-78.

[24] Id.

[25] Id. at 658.

> house. Some, but not all, of the fees incurred by the petitioner were caused by the intransigence of the respondent. In addition, he has an ability to pay, and the petitioner has the need for fees.[26]

There are no specific findings supporting the time incurred or the hourly rate charged. We conclude the court's findings are insufficient to allow meaningful review and the appropriate remedy is a remand on the existing record for entry of findings and conclusions of law to support the attorney fee award.[27]

III. Interpreter

Pistrak challenges the trial court's finding concerning his need for an interpreter. At the end of trial, the court scheduled a final hearing on November 18, 2016 to issue its oral ruling. At the hearing, Pistrak appeared telephonically and indicated he did not understand the proceeding because there was no translator present. The court addressed two exhibits which were discussed during trial but not admitted "because we were waiting for the official copies."[28] At the hearing on November 18, 2016, the court admitted the official records in place of the photocopies that were referenced during trial. Pistrak again indicated that he did not understand and that he was unable to participate. The court ended the hearing because "Mr. Pistrak

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[26] CP at 3271.

[27] Berryman, 177 Wn. App. at 659 ("Normally, a fee award that is unsupported by an adequate record will be remanded for entry of proper findings of fact and conclusions of law that explain the basis for the award.").

[28] RP (Nov. 18, 2016) at 525.

doesn't understand what's going on, so I'm going to get off the bench and enter this in writing."[29]

In the findings of fact and conclusions of law, the court stated:

> The court started to express these findings orally, in open court, this date, with the petitioner and her attorney present in court, and with Mr. Pistrak participating by telephone, as suggested by the court when Mr. Pistrak asked to be excused from the hearing. He demonstrated during many hearings, and during trial, that his English was excellent. Nonetheless, at his request the court provided Russian interpreters during the trial. As Mr. Pistrak's participation at today's hearing was uncertain, there was no Russian interpreters present. *Mr. Pistrak claimed he did not understand even the basic preliminary comments by the court. The court did not find this credible, but determined it was appropriate to end the hearing and/o simply enter the findings and decree in writing.*[30]

Pistrak now seeks to reverse this finding, arguing he had a right to an interpreter.[31] But he misinterprets the court's specific finding. The court did not reach the underlying question of whether Pistrak needed an interpreter. Rather the court's specific finding is that it did not find it credible that Pistrak was

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[29] Id. at 526.

[30] CP at 3273 (emphasis added).

[31] In his opening brief, Pistrak also seeks to strike the exhibits from the trial record. In his reply brief, Pistrak claims it is not his goal "in appealing the absence of interpreter [] to exclude certain exhibits." Reply Br. at 14.

unable to understand even the basic preliminary comments by the court.

In his narrow assignment of error, Pistrak contends "the trial Court erred in not providing an interpreter to husband during the ruling on the case on November 18, 2016." But Pistrak fails to provide any basis for relief on appeal given the fact that after the ministerial act of substituting official records for photocopies, the court ended the hearing. The lack of an interpreter at the November 18, 2016 hearing did not prejudice Pistrak when the court terminated that hearing on his objection.

We deny Pistrak's request to reverse the trial court's finding.

IV. Fees on Appeal

Golubeva requests fees on appeal under RCW 26.09.140 and based on Pistrak's intransigence.

RCW 26.09.140 allows for an award of fees on appeal based on the financial resources of the parties to a dissolution action. Golubeva's declaration establishes her need and Pistrak's ability to pay. Because the statute supports an award of fees, we need not consider Golubeva's alternative theory of intransigence on appeal.

We grant Golubeva's request for fees on appeal upon her compliance with RAP 18.1(d). Therefore, we affirm the award of $8,000 for unpaid temporary maintenance. As to the award of attorney fees in the trial court, we remand for further proceedings on the existing record consistent with this opinion.[32]

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[32] Consistent with the commissioner's April 16, 2018 ruling, we deny the parties' reciprocal motions to strike, Pistrak's motion

s/ James R. Verellen

WE CONCUR:

s/ Marlin J. Appelwick

s/ Becker, J.

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to take judicial notice, and Golubeva's request for sanctions. As to Pistrak's July 2, 2018 motion to take judicial notice, he failed to assign error to the findings he asks us to amend, and these findings are not germane to this appeal.

APPENDIX G – Excerpts from the Transcript of the November 6, 2015 Hearing on maintenance.

Excerpt 1
[Page 9, Lines 12-21]

THE COURT: And I'll pose it because I'm laying it out for a judge above, because all party litigants have a right to revision. When you are dealing with maintenance and when you're dealing with a short-term marriage and when you're dealing with parties who may or may not work in the United States, it becomes the responsibility of the spouse, no matter how short the marriage is, to carry the responsibility of providing for the spouse rather than the citizens of the state of Washington. So that's what I'll be looking at in the interim when I order maintenance.

Excerpt 2
[Page 16, Lines 19-25; Page 17, Lines 1-9]

MR. HORNER: Because she simply can't support herself at all at this point, least of all in the lifestyle which had been established during the marriage, however short. The request, I wanted to clarify, is until she can work again, not until trial. The request is until she can work again. She wants to work.

THE COURT: She can work soon? She can?

MR. HORNER: Provided the immigration service will process her application.

THE COURT: But if they don't, it's not his responsibility, correct? It's not his issue?

MR. HORNER: Well, the request is until she can work again. I mean, her need will continue. She doesn't control the feds on this, but she's moving as quickly as she can through -- the point is her intent. Her intent is not to bleed him dry. That's the point here.

No. 24-834

In the Supreme Court of the United States

Evgeny Pistrak,

Petitioner,

v.

Kseniia Golubeva,

Respondent.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that all parties required to be served, have been served, on this 1st day of February, 2025, in accordance with the U.S. Supreme Court Rule 29.3, three (3) copies of the Petition for a Writ of Certiorari in the above-entitled case by placing said copies in the U.S. mail first class postage prepaid, addressed as listed below.

Charles R. Horner
Law Office of Charles R. Horner, PLLC
1911 Southwest Campus Drive, No. 727
Federal Way, Washington 98023
206-381-8454
crhornerpllc@outlook.com

Counsel for Respondent

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

Executed on February 1, 2025.

Evgeny Pistrak, *pro se*
140th Ave NE D2-1220
Bellevue, WA 98005
(425) 214-2742
evpisa@gmail.com

No.

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Respondent.

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I, Evgeny Pistrak, Petitioner pro se, certify that the Petition for a Writ of Certiorari in the above-entitled case complies with the typeface requirement of Supreme Court Rule 33.1(b), being prepared in Century Schoolbook 12-point for the text and 10-point for the footnotes, and that the petition complies with the word limit of Supreme Court Rule 33.1(g). It contains 3,832 words, excluding the parts that are exempted by Supreme Court Rule 33.1(d).

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

Executed on February 1, 2025.

Evgeny Pistrak, *pro se*
140th Ave NE D2-1220
Bellevue, WA 98005
(425) 214-2742
evpisa@gmail.com