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IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
FOR THE COUNTY OF LINN

|                             |   |   |
|-----------------------------|---|---|
| IN THE MATTER OF:           | ) |   |
|                             | ) |   |
| KYLA MAZHARY-CLARK,         | ) | CASE NO. 19DR03123                              |
|                             | ) |   |
| PETITIONER,                 | ) | <b>RESPONDENT'S OBJECTION TO</b>                |
|                             | ) | <b>PETITIONER'S STATEMENT OF ATTORNEY</b>       |
| and                         | ) | <b>FEES</b>                                     |
|                             | ) |   |
| JAMIE CLARK (nka CROMPTON), | ) | <i>Hearing Requested (1 hour)</i>               |
|                             | ) |   |
| RESPONDENT,                 | ) | Special Findings of Fact and Conclusions of Law |
|                             | ) | Requested - ORCP 68 C(4)(g)                     |
| and                         | ) |   |
|                             | ) |   |
| KENNETH CLARK,              | ) |   |
|                             | ) |   |
| RESPONDENT.                 | ) |   |

**HEARING REQUESTED**

Respondent requests a one (1) hour hearing to address this issue.

**OBJECTION**

Respondent (hereafter Mother), through attorney William Boaz, hereby objects to the ORCP 68 Statement of Attorney Fees and Costs filed by Petitioner (hereafter Psychological Parent) as follows:

*Psychological Parent's Allegation #1 (Page 1, paragraph 1). Petitioner is authorized to seek an award of "... reasonable attorney fees and costs and expenses reasonably incurred..." in this action pursuant to ORS 107.105(j) as authorized by ORS 109.103(1) which provides that in a proceeding involving children of unmarried parents "The parents have the same rights and responsibilities regarding the custody and support of, and parenting time with, their child that divorced parents have, and the provisions of ORS 107.094 to ORS 107.449 that relate to custody, support and parenting time, the provisions of ORS 107.755 to 107.795 that relate to mediation procedures, and the provisions of ORS 107.810, 107.820 and 107.830 that relate to life insurance, apply to the proceeding"*

**Mother's Objection.** Psychological Parent fails to cite any authority for an award of attorney fees and costs in this matter. ORS 107.105(1)(j) authorizes attorney fees in an initial divorce

1 proceeding and ORS 109.103(1) authorizes attorney fees and costs in initial custody cases in-  
2 volving unmarried parents. This case is a 3<sup>rd</sup> party case. ORS 109.119(7)(b) authorizes the court  
3 to award attorney fees and costs in an **initial** 3<sup>rd</sup> party case. However, this case was not an initial  
4 proceeding. Mother filed a motion to set aside a judgment that had already gone through the  
5 initial proceeding by default. Moreover, the second part of this case was related to a modifica-  
6 tion of the 3<sup>rd</sup> party judgment. ORS 109.119 does not specifically mention a process or standard  
7 to govern modifications, nor does it provide any authority for awarding attorney fees in a modi-  
8 fication of 3<sup>rd</sup> party cases. Ultimately, Psychological Parent failed to cite any legal authority for  
9 the court to award attorney fees and costs in a 3<sup>rd</sup> party set aside or modification proceeding, as  
10 required by ORCP 68C(2)(a), which states, "No attorney fees shall be awarded unless a right to  
11 recover fees is alleged as provided in this paragraph or in paragraph C(2)(b) of this rule." There-  
12 fore, for this reason alone, Psychological Parent's request for attorney fees and costs should be  
13 denied.

14 **Psychological Parent's Allegation #2 (Page 2, paragraph 3 and Exhibit 1).** *The number of hours*  
15 *and services rendered in this matter by this firm are set forth in detail on Exhibit "1," attached hereto and*  
16 *by reference incorporated herein.*

17 **Mother's Objection.** While Mother is not objecting to the amount of time or hourly rates  
18 charged by Psychological Parent's attorney and staff, Mother is concerned that, based on Psy-  
19 chological Parent's law partnership in the firm that represented her in this case, that Psycholog-  
20 ical Parent may overly benefit by any award of attorney fees. When awarding fees, the court's  
21 goal is to make the prevailing party whole, while ensuring the prevailing party is not provided a  
22 windfall. Therefore, it is Psychological Parent's burden to prove she was properly billed for the  
23 work performed by her firm, prove that Psychological Parent paid that bill to her firm (domestic  
24 relation attorneys are prohibited from charging a contingency fee based on the outcome of a  
25 case), and prove Psychological Parent does not personally benefit from receiving a percentage  
26 of those funds.

27 Second, Psychological Parent, with that close relationship to the law firm representing  
her (as a partner), has the burden to prove that the hours billed by her attorney and staff were

1 **actually performed** by that person. It appears Psychological Parent is seeking reimbursement  
2 for attorney fees and costs for the drafting of the ORCP 68 Statement of Attorney Fees and Costs.  
3 However, notably, the language used in the statement appears to match that of other pleadings  
4 in this case. For example, Mr. Ivers drafted the response to Mother's motion to set aside and  
5 modify. In that response, Mr. Ivers cites ORS 109.119 as authority to award attorney fees in this  
6 matter. However, the Statement of Attorney Fees and Costs doesn't even mention that statute  
7 and, instead, cites authority for the court to award attorney fees in initial divorce and custody  
8 proceedings. It doesn't seem reasonable to believe that an attorney with Mr. Ivers experience  
9 would make such an oversight. Moreover, every document filed in this matter by Mother's attor-  
10 ney was filed by one of Mr. Ivers' staff with the exception of the Statement of Attorney Fees and  
11 Costs that was filed by Psychological Parent herself. This certainly seems to be a strong indica-  
12 tion that Psychological Parent drafted the Statement of Attorney Fees and Costs but billed it as  
13 if Mr. Ivers drafted it at Mr. Ivers' rate.

14 ***Psychological Parent's Allegation #3 (page 6).*** *The conduct of the parties in the transactions or*  
15 *occurrences that gave rise to the litigation, and the objective reasonableness of the claims and defenses*  
16 *asserted by the parties.*

17 **Mother's Objection.** Psychological Parent cites the attempts Mother made to set aside  
18 the judgment before she filed this present case. However, Psychological Parent fails to mention  
19 that Mother was a self-represented litigant in those prior proceedings without any legal educa-  
20 tion or training. Moreover, all of Mother's attempts were rejected solely based that too much  
21 time had passed before Mother raised the issue (over 1 year). However, the court does has au-  
22 thority to set aside a judgment even after that one-year period. Ultimately, Mother's attorney was  
23 unsuccessful in convincing the court that it should utilize that part of the statute. When measur-  
24 ing objective reasonableness of Mother's actions, beside simply looking at the outcome, the  
25 court must also take into account the value of what Mother was seeking. Mother wanted to have  
26 her children back in her care, which may be the most valuable thing to certain individuals. It  
27 would be very difficult (if not impossible) for a non-lawyer to understand why a procedural hurdle

1 could keep the court from reaching the substantive merits of the case. Due to Psychological Parent  
2 obtaining custody of Mother's children by default, the court itself has never assessed whether or  
3 not Psychological Parent would even qualify under the statute to be a psychological parent or  
4 whether awarding custody of Mother's children to Psychological Parent would even be in the  
5 best interests of those children.

6 Psychological Parent also argues that Mother should have accepted Psychological  
7 Parent's informal settlement offers prior to Mother bringing this present litigation. However, Psy-  
8 chological Parent fails to mention that Psychological Parent and Mother did reach an informal  
9 settlement agreement prior to Mother bringing this litigation. Psychological Parent presented a  
10 step-up parenting plan offer that was very similar to the one presented at trial. Mother re-  
11 sponded that she would not agree to the step-up part of the plan but would agree to last stage  
12 of that plan. Psychological Parent agreed with that and said she would get everything drafted  
13 up. However, when Mother followed-up with Psychological Parent several times, Psychological  
14 Parent would tell Mother that she was still drafting it, still needing to review it, etc. Ultimately,  
15 Mother hired an attorney and brought this action because Psychological Parent never finalized  
16 their agreement, and it became clear that Psychological Parent was going to keep stalling. No-  
17 tably, even after the court made a ruling on Mother's motion to modify and awarded Mother  
18 actual parenting time with her children, Psychological Parent then took the position that Mother  
19 still could not exercise parenting time until the judgment was entered. Psychological Parent then  
20 stalled that process by refusing to make the necessary changes to the proposed form of judg-  
21 ment she prepared until just before the second hearing scheduled by the court on Mother's  
22 objections to the form of judgment.

23 ***Psychological Parent's Allegation #4.*** *The objective reasonableness of the parties and the dili-*  
24 *gence of the parties pursuing settlement of the dispute.*

25 **Mother's Objection.** Psychological Parent again reiterates the settlement negotiations  
26 that occurred prior to Mother filing her motion (and, again, fails to mention that the parties  
27 reached an agreement that Psychological Parent didn't finalize). However, this factor discusses

1 what the parties did during the action to pursue settlement. Psychological Parent did not per-  
2 sonally or through her attorney make any settlement offers during this proceeding. Therefore,  
3 this factor actually weighs against Psychological Parent.

4 **Conclusion.** For all these reasons, the court should deny Psychological Parent's Statement of  
5 Attorney Fees and Costs.

6 DATED this 25<sup>th</sup> day of July, 2023.

7 **BOAZ LEGAL, P.C.**



8 \_\_\_\_\_  
9 William Boaz, OSB No. 113313

10 Email: *william@boazlegal.com*

11 Attorney for Respondent

12 **CERTIFICATE OF SERVICE**

13 I certify that I served a true and complete copy of this document as follows:

14 **Petitioner's Attorney**

15 Andrew Ivers

16 Email: *andy@ivers.law*

- 17 \_\_\_\_\_ Mail
- 18 \_\_\_\_\_ Hand-Delivery
- 19 \_\_\_\_\_ Fax
- 20  E-Service
- 21  Email (courtesy copy)

22 DATED this 25<sup>th</sup> day of July, 2023.

23 **BOAZ LEGAL, P.C.**



24 \_\_\_\_\_  
25 William Boaz, OSB No. 113313

26 Email: *william@boazlegal.com*

27 Attorney for Respondent

## EXHIBIT 2

### Case Summary

[Insert Facts]

### Factors Favoring an Award - ORS 20.075(1)

The court shall consider the following factors in determining whether to award attorney fees and costs:

1. The conduct of the parties in the transactions or occurrences that gave rise to the litigation, including any conduct of a party that was reckless, willful, malicious, in bad faith or illegal.  
[Insert details]
2. The objective reasonableness of the claims and defenses asserted by the parties.  
[Insert details]
3. The extent to which an award of an attorney fee in the case would deter others from asserting good faith claims or defenses in similar cases.  
[Insert details]
4. The extent to which an award of an attorney fee in the case would deter others from asserting meritless claims and defenses.  
[Insert details]
5. The objective reasonableness of the parties and the diligence of the parties and their attorneys during the proceedings.  
[Insert details]
6. The objective reasonableness of the parties and the diligence of the parties in pursuing settlement of the dispute.  
[Insert details]
7. The amount that the court has awarded as a prevailing party fee under ORS 20.190.  
This factor was not present. The court may not award a prevailing party fee in proceedings under the provision of ORS chapters 107, 108, or 109.
8. Such other factors as the court may consider appropriate under the circumstances of the case.

### Factors Favoring Amount of Award - ORS 20.075(2)

If the court determines that an award of attorney fees and costs is appropriate, the court shall consider the following factors in determining the amount of the award:

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1. The time and labor required in the proceeding, the novelty and difficulty of the questions involved in the proceeding, and the skill needed to properly perform the legal services.

[Insert details]

2. The likelihood, if apparent to the client, that the acceptance of the particular employment by the attorney would preclude the attorney from taking other cases.

This factor was not present.

3. The fee customarily charged in the locality for similar legal services.

The hourly fees charged by attorneys, legal assistants, and clerks in this office are appropriate in the Salem community for attorneys and staff with the same respective experience who limit their work to specific areas of the law.

4. The amount involved in the controversy and the results obtained.

[Insert details]

5. The time limitations imposed by the client or the circumstances of the case.

This factor was not present.

6. The nature and length of the attorney's professional relationship with the client.

[Insert details]

7. The experience, reputation, and ability of the attorney performing the services.

My practice has been limited to the areas of family law and divorce since I began practicing as an attorney. By confining my practice to the area of divorce, the time necessary to research and properly prepare written and oral argument is significantly reduced.

I serve on the legislative subcommittees for both the Oregon State Bar Family Law Section and the Statewide Family Law Advisory Committee (SFLAC) and am a member of the Oregon Academy of Family Law Practitioners. I have been named a Rising Star in Super Lawyers Magazine every year since 2015.

I am in court on a frequent basis. This exposure has enabled me to learn skills and techniques that significantly reduces the amount of time it takes to prepare a case for trial. It has also shown me the value of presenting a clear, concise case to the court rather than an unprepared presentation.

8. Whether the fee is fixed or contingent.

This factor was not present.