No. 89861-8
(Court of Appeals No. 70048-1-I)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Marriage of:

LALIDA SCHNURMAN,

Respondent,

and

SETH SCHNURMAN,

Petitioner.

LALIDA SCHNURMAN'S ANSWER TO PETITION FOR REVIEW

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I. ANSWERING PARTY'S IDENTITY

Answering party Lalida Schnurman is the Respondent in the Court of Appeals Division 1 and the Petitioner in the trial court.

II. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether chapter 26.19 RCW and *State ex rel. M.M.G. v. Graham*[1] provide for calculation of child support when parents share equal residential time with their children.

2. Whether the trial court properly used the standard calculation of child support.

3. Whether the trial court and the Court of Appeals properly characterized Seth's request for a decrease in his monthly transfer payment as a request for a downward deviation.

4. Whether the trial court properly denied Seth Schnurman's request for a downward deviation.

5. Whether the methods for calculating child support prescribed in chapter 26.19 RCW meet its stated legislative goals.

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[1] 159 Wn.2d 623, 152 P.3d 1005 (2007); *State ex rel. M.M.G. v. Graham*, 123 Wn. App. 931, 99 P.3d 1248 (2004), *aff'd in part, rev'd in part on other grounds, Graham*, 159 Wn.2d 623, *abrogated on other grounds, In re Marriage of McCausland*, 159 Wn.2d 607, 152 P.3d 1013 (2007).

III. RESTATEMENT OF THE CASE

Seth Schnurman and Lalida Schnurman's marriage was dissolved on February 15, 2013. They have two minor children, who were then ages 8 and 6.[2] The trial court entered a parenting plan under which neither parent has primary residential care but instead both parents have equal residential time.[3]

When the trial court calculated child support obligations, it found Seth's monthly net income to be $6,338 and Lalida's to be $3,380.[4] The trial court determined Seth to be the obligor parent and, using the standard calculation for child support obligations, ordered him to pay her a monthly transfer payment of $1,300 ($650 per child).[5]

Seth took the position that the standard calculation does not apply in equally shared residential situations, where there is necessarily no primary residential parent. He urged a different methodology, which would have resulted in a decreased monthly transfer payment. The trial court characterized this as a request for a downward deviation and denied the request, making the following unchallenged finding of fact:

> While the Husband will be spending substantial time with the children, there is no evidence this will significantly increase his costs to support the children or significantly

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[2] CP 159.
[3] CP 172-75.
[4] CP 108.
[5] Slip opinion at 2.

> reduce Wife's expenses to support the children. Allowing a downward deviation from the standard child support calculation will also result in insufficient funds for the Wife's household.[6]

In affirming the trial court's award of child support, the Court of Appeals affirmed the trial court's characterization as a request for a downward deviation and also affirmed the trial court's denial of the request.[7]

IV. ARGUMENT

A. Petitioner has not shown grounds for acceptance of review.

A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b).

Petitioner has not advanced a constitutional question argument under RAP 13.4(b)(3), and Petitioner fails to show any of the remaining three grounds under which review may be accepted.

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[6] CP 109, Child Support Order ¶3.8
[7] Slip opinion at 2, n.4.

1. This is not a case of first impression.

Contrary to Seth's argument that this is a case of first impression, this Court has already considered and rejected an alternative formula for calculating transfer payments when parents share residential time equally.[8] This Court previously held, in affirming Court of Appeals Division 1, that the statutory child support schedule applies in shared residential situations, such as this one.[9] Additionally, RCW 26.19.075 expressly gives the trial court discretion to deviate from the basic child support obligation based on the facts of a particular case, and expressly when, as here, a "child spends a significant amount of time with the parent who is obligated to make a support transfer payment";[10] therefore, a specific formula is neither necessary nor statutorily required to ensure the parents' child support obligation is properly allocated.[11] The Court of Appeals Division 1 is correct that *Graham* is dispositive.[12]

Although Seth has provided information from the Washington State Center for Court Research showing that equal residential arrangements are the most common arrangement in Washington state (Pet. at App. 2) and would therefore be a matter of substantial public

[8] *Graham*, 159 Wn.2d at 635-36.
[9] *Graham*, 159 Wn.2d at 626, 632.
[10] RCW 26.19.075(1)(d).
[11] RCW 26.19.075; *Graham*, 159 Wn.2 at 636.
[12] Slip opinion at 8.

interest, to accept review, RAP 13.4(b)(4) additionally requires that the issue should be determined by the Supreme Court. But this Court has already decided *Graham* and because *Graham* is dispositive regarding support in equally shared residential arrangements, the calculation of child support in such situations is not an issue that needs determination by this Court. Therefore review should be denied.

2. The trial court properly determined the obligor parent.

The statutory scheme and case law are clear about how a trial court is to determine the amount of a transfer payment and the obligor parent, including in 50/50 residential situations.

To begin, the legislature intended child support obligations to be "equally apportioned between the parents."[13] As the Court of Appeals explained:

> When entering an order of child support, the trial court begins by setting the basic child support obligation. RCW 26.19.011(1); *Graham*, 159 Wn.2d at 627. This obligation is determined from the statute's economic table, which is based on the parents' combined monthly net income, as well as the number and age of their children. RCW 26.19.011(1), .020. The economic table is presumptive for combined monthly net incomes of $12,000 or less. RCW 26.19.020, .065.
>
> The trial court next allocates the child support obligation between the parents based on each parent's share of the combined monthly income. RCW 26.19.080(1). The court then determines the standard calculation, which is the presumptive amount of child support owed by the obligor

[13] RCW 26.19.001.

> parent to the obligee parent. RCW 26.19.011(8); *Graham.* 159 Wn.2d at 627. If requested, the court considers whether it is appropriate to deviate upwards or downwards from the standard calculation. RCW 26.19.011(4), (8). The court has discretion to deviate from the standard calculation based on such factors as the parents' income and expenses, obligations to children from other relationships, and the children's residential schedule. RCW 26.19.075(1).
>
> If the court considers a deviation based on residential schedule, it must follow a specific statutory analysis:
>
> > The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving temporary assistance for needy families. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.
>
> RCW 26.19.075(1)(d). The trial court must enter written findings of fact supporting the reasons for any deviation or denial of a party's request for deviation. RCW 26.19.075(3); *Graham*, 159 Wn.2d at 627-28. After determining the standard calculation and any deviations, the trial court then orders one parent to pay the other a support transfer payment. RCW 26.19.011(9).

Slip opinion at 4-5. Here, the trial court did not set a transfer payment that deviated from the standard calculation. First, there was no designated

primary residential parent, because the parties shared 50/50 residential time. Second, the record shows that Seth's greater income made him responsible for 65.2% of the *total* basic support obligation. The trial court set Seth's monthly transfer payment to Lalida at $1300, which is 65.2% of the total basic child support obligation.

Pursuant to RCW 26.19.075(1)(d), because the children spend a significant amount of time with Seth, he was permitted to request a downward deviation from the standard calculation. He did so. But the court made an express finding, not challenged on appeal, that such a downward deviation would have resulted in insufficient funds in the household receiving the support to meet the basic needs of the children.[14] Under such circumstances, RCW 26.19.075(1)(d) prohibits a trial court from making a downward deviation. The Court of Appeals therefore properly affirmed the trial court's denial of Seth's request for a downward deviation.

3. A potential conflict between Divisions of the Court of Appeals does not meet the standard of RAP 13.4(b)(2).

A petition for review by the Supreme Court will be accepted only under certain circumstances, including when "the decision of the Court of Appeals *is* in conflict with another decision of the Court of Appeals." RAP 13.4(b)(2) (emphasis added). Seth argues that review should be

[14] CP 109, Child Support Order ¶3.8

accepted because a similar case is now before Division 3 and "the *potential* for its decision to be in conflict with Division 1 is very real." Petition for Review at 9 (emphasis added). However, RAP 13.4(b)(2) does not allow this Court to accept review when a conflict with another decision is merely "potential." Under RAP 13.4(b)(2), to accept review, there must be a decision that *is in conflict* with another decision of the Court of Appeals. The potential that Division 3's decision will be fully in accord with Division 1's decision is also very real. The question of a conflicting decision between Division 1 and Division 3 is therefore not ripe for review.

4. *Holmes* is clear that the determination of which parent will make the transfer payment to the other is governed by statute, specifically under chapter 26.09 RCW.

Seth argues that *Graham* does not answer how and upon what authority the obligee parent is to be determined when parents share residential time equally. Petition at 4. He also argues that *Holmes*[15] "makes it clear that it is only the parent with whom the children reside a majority of the time is [*sic*] entitled to a standard calculation transfer payment." Petition at 10.

[15] *In re Marriage of Holmes*, 128 Wn. App. 727, 117 P.3d 370 (2005).

Holmes says that the determination of which parent will make the transfer payment to the other is made under chapter 26.09 RCW.[16] RCW 26.09.100(1), as amended, vested the superior court with authority to "order either or both parents to pay child support in an amount determined under chapter 26.19 RCW."[17] *Holmes* also states that in situations where children reside a majority of the time with one parent, the obligor parent is the one with whom the children do not reside a majority of the time.[18] The *Holmes* court added however, "This presumption is not without exception."[19] But more importantly, the *Holmes* case concerned a child who resided a majority of the time with the father, not a child in an equally shared residential situation.[20] Seth mischaracterizes *Holmes* when he states that it "makes clear that it is only the parent with whom the children reside a majority of the time" that is entitled to a standard calculation transfer payment.

B. Petitioner has not provided the full record for review.

Petitioner has not provided a verbatim report of proceedings. Therefore the record is not adequate for review.

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[16] *Holmes*, 128 Wn. App. at 739.
[17] *Id.* RCW 26.09.100(1) as amended now reads, in relevant part, "In a proceeding for dissolution of marriage... or child support, after considering all relevant factors but without regard to misconduct, the court shall order either or both parents owing a duty of support to any child of the marriage... dependent upon either or both spouses... to pay an amount determined under chapter 26.19 RCW."
[18] *Holmes* at 739, citation omitted.
[19] *Id.* at 740.
[20] 128 Wn. App. at 740-41.

C. Chapter 26.19 RCW reaches its stated legislative goals to meet a child's basic needs while apportioning support obligations equitably between parents.

The legislature's intent in enacting chapter 26.19 RCW, the child support schedule, was "to insure that child support orders are adequate to meet a child's basic needs and to provide additional child support commensurate with the parents' income, resources, and standard of living." RCW 26.19.001. The legislature also intended child support obligations to be "equitably apportioned between the parents." *Id.*

How the trial court does this is described in detail above; briefly, it sets the basic support obligation using a statutory economic table, which takes into account the parents' combined monthly net income and the number and age of the children. RCW 26.19.011(1). It then allocates the child support obligation between the parents based on each parent's share of the combined monthly income. RCW 26.19.080(1). It then determines the standard calculation, which is the presumptive child support amount owed by the obligor parent to the obligee parent. RCW 26.19.011(8).

Upon request, the trial court may consider whether an upward or downward deviation from the standard calculation is appropriate. RCW 26.19.011(4). A court has discretion to deviate from the standard calculation if the child spends a significant amount of time with the

obligor parent, but deviation is *not* permitted if the deviation would "result in insufficient funds in the household receiving the support to meet the basic needs of the child." RCW 26.19.075(1)(d). As stated above, in this matter there was an express and unchallenged finding of fact that a downward deviation would in fact result in insufficient funds for the mother's household.

D. The issue of combined incomes exceeding the maximum advisory level of the economic table is not raised here, but even if it were, the support obligation determination process would not be different in different situations.

The economic table of chapter 26.19 RCW is presumptive for combined monthly net incomes of $12,000 or less.[21] Petitioner argues that, contrary to the Slip opinion's assertion that "the same process" is applied to "all child support obligations," in fact a different methodology is used when combined monthly net incomes exceed $12,000. Pet. at 10-12.

"It is a general rule that, where only moot questions or abstract propositions are involved, or where the substantial questions involved in the trial court no longer exist, the appeal... should be dismissed."[22] The term "moot" is generally applied to cases where the determination does not rest on existing facts or rights, cases in which no judgment rendered

[21] RCW 26.19.020, .065.
[22] *Sorenson v. Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972).

could be carried into effect, or cases in which no actual controversy exists.[23] An exception to this rule exists where this Court determines the moot issue to be of substantial or continuing public interest.[24] The governing criteria in this determination, as set out in *Sorenson*, are whether: (1) the issue presented is of a public or private nature, (2) it is desirable to provide guidance to public officers, and (3) the issue is likely to recur.[25]

Here, Seth Schnurman and Lalida Schnurman have a combined monthly net income of less than $12,000.[26] Therefore the question of how the trial court would have handled this case if the parties had combined monthly net incomes in excess of $12,000 is an abstract proposition not resting on existing facts

However, this Court need not take up this issue under the exception outlined in *Sorenson*, because public officers already have guidance for such a situation when it occurs. The child support statute states, "When combined monthly net income exceeds twelve thousand dollars, the court may exceed the presumptive amount of support set for combined monthly net incomes of twelve thousand dollars upon written

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[23] 5 Am.Jur.2d Appeal and Error § 762 (1962).
[24] *Sorenson* at 558.
[25] *Sorenson* at 558.
[26] CP 108.

findings of fact."[27] The same child support schedule applies in all situations with combined monthly net incomes of $12,000 or less. And where combined monthly net incomes are in excess of $12,000, the child support schedules "cap out," but the same provision allowing a court to exceed the presumptive support amount upon written findings of fact applies in all such situations. Therefore, even if a combined monthly net income in excess of $12,000 were presented in this case, the same process still applies for all child support obligations.

E. The issue of parents with substantially equal monthly net incomes is not raised here, but even if it were, the support obligation determination process would not be different.

Petitioner argues that parties and courts are left in a quandary by the *Schnurman* decision if they have substantially equal monthly net incomes. Pet. at 13. First, as with the issue of combined monthly net incomes in excess of $12,000, these facts are not presented in this case, because Seth and Lalida have substantially unequal incomes.

But even if these facts were presented, public officers already have guidance under the existing case law and statutory scheme. Once again, the trial court would determine the basic support obligation from the statute's child support table.[28] It would next allocate the child support obligation based on each parent's share of the combined monthly net

[27] RCW 26.19.020; RCW 26.19.065(3).
[28] RCW 26.19.011(1).

income[29] which, under Seth's hypothetical facts, would be something like 50-50 or 49-51. The trial court would then determine the standard calculation.[30]

Seth then asserts that the deviation statute, RCW 26.19.075, will not equitably apportion unequal expenses, because neither parent would be entitled to the standard calculation payment where the parents earn substantially equal incomes. Pet. at 14. But in fact, under the statutory scheme, even where the parents have substantially equal incomes, the trial court will use its discretion to determine the obligor parent, who will then have the opportunity to request a downward deviation for factors including debt and high expenses.[31]

V. Conclusion

The method for determining a child support obligation in an equally shared residential situation is settled law. This Court already considered this issue when it affirmed the Court of Appeals, Division 1, in *State ex rel. M.M.G. v. Graham*. Therefore this is neither a case of first impression nor, because the issues are settled, does it raise any questions of substantial public interest that should be determined by this Court.

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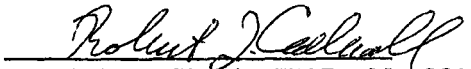
[29] RCW 26.19.080(1).
[30] RCW 26.19.011(8).
[31] RCW 26.19.075(1)(a) and (c).

Petitioner has also failed to show an actual conflict between the divisions of the court of appeals or a conflict with a decision by this Court. For these reasons, review should be denied.

DATED this 25th day of February, 2014.

OLYMPIC LAW GROUP, PLLP



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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the below written date, I caused delivery of a true copy of Lalida Schnurman's Answer to Petition for Review:

H. Michael Finesilver Anderson, Fields, MCllwain & Dermody 207 East Edgar Street Seattle, WA 98102 les@a-f-m-law.com	____ Facsimile ____ Messenger __X__ U.S. Mail __X__ Email

Signed this 26th day of February, 2014 Seattle, Washington.

Lindsey M. Matter
Paralegal

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Oh my. My apologies.

Very truly yours,

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Please find attached Answer to Petition for Review for filing.

Thank you.

Very truly yours,

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