NO. 319610-III

COURT OF APPEALS FOR DIVISION III

STATE OF WASHINGTON

SHANNON MARIE LANGFORD,

Respondent,

vs.

CHAD FRANKLIN LANGFORD,

Appellant.

APPELLANT'S BRIEF

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I. INTRODUCTION

The process for determining child support obligations is readily applicable to divorced family situations where the children reside a majority of the time with one residential parent. In those situations, the obligor parent is the one with whom the children do not reside a majority of the time, and that parent makes a transfer payment to the parent with whom the children primarily reside. However, as the appellate courts have previously recognized, the child support schedules set forth in Chapter 26.19 RCW do not address the appropriate method of calculating child support where each parent has primary residential care of one or more children. See, e.g. **Arvey**, 77 Wn.App. at 822-23, 894 P.2d 1346; **In re Marriage of Oakes**, 71 Wn.App. 646, 650, 861 P.2d 1065 (1993). Similarly, the child support schedules do not address the appropriate method of calculating support where the parents share equal residential time. Petitioner humbly requests this court render a ruling in effort to provide guidance for such joint custody situations.

In 1995, Division I of the Court of Appeals decided **In re Marriage of Arvey**, 77 Wn.App 817, which determined, in split-residential custody cases, each parent shall be regarded as child support obligor and child support obligee (since each parent maintained primary residential custody of at least one child). Significantly, **Arvey** established that in "split custody" situations, after determining each parent's net child support obligation, the trial court should adjust the figure to reflect each parent's proportional share based on the number of children who primarily reside in his or her household. **Arvey**, 77 Wn.App. at 823-26.

Likewise, in equally shared residential custody situations, no 'primary residential parent' exists for purposes of properly labeling child support obligor or support obligee. Moreover, both parents are responsible for the same children and the same needs equally. In 2007, the Washington Supreme Court declined to extend **Arvey** or provide an **Arvey**-type formula to shared residential situations. **State ex rel. M.M.G. v Graham**, 159 Wn.2d 623, 152 P.3d 1005 (2007). Cases were reversed when trying to apply **Arvey** by analogy to a shared residential custody situation. The Supreme Court held that the plain text of RCW 26.19.075 provides the trial courts discretion to deviate from the basic child support obligation

based on a variety of factors, one of which is the amount of residential time the children spend with the parents. **Graham**, 159 Wn.2d at 636. As a result, the Court passed on providing a specific formula to ensure the parents' child support obligation is properly allocated. Id.

Unfortunately, the facts presented in this petition suggest additional guidance is desperately needed. Indeed, the lack of authority has lead to contradictory results under similar fact situations[1] as well as scholarly discussion[2] when determining **the "presumptive" child support obligation** before considering factors for deviation. Until the problem is addressed by the courts or the legislature, there will continue to be confusion and/or inconsistent results.

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[1] Contradictory results: In a 1993 case in which the parents each had one child, Division I of the Court of Appeals held that trial court acting within its discretion in requiring the support obligations of the parents to be calculated on the basis of a two-child family, with the father being designated as the the obligor. The father's proportional share of the income was 59.8%. The support for the children was determined to be $1,390, which established the father's share to be $831.22 and the mother's share to be $558.78. The court then offset these two figures and ordered the father to pay to the mother the sum of $272.44 as the transfer payment. **In re Marriage of Oakes**, 71 Wn.App. 646, 861 P.2d 1065 (1993). Later, **In re Marriage of Arvey**, 77 Wn.App. 817, 894 P.2d 1346 (1995), a different panel of Division I said that **Oakes** was mistaken in treating one parent as the primary residential parent and treating the other parent as the child support obligor. In a split custody arrangement either parent is the primary residential parent of the children residing with that parent, and the other parent is the obligor in respect to those children. The court then applied the Arvey formula.

[2] See, G. Stone & M. Appelwick, Practice Alert: Understanding In re Marriage of Arvey, 77 Wn.App. 817, 894 P.2d 1346 (1995), Wash. St. Bar News, Sept. 95, pp 49ΓÇô50 and letter to the Editor of Wash. St. Bar News, Oct 1995, p 7, by Halley R. Hupp.

II. ASSIGNMENT OF ERROR

When custody of two (2) minor children is shared equally between the parents, may the Superior Court order only one parent to pay the standard calculation without any offset or credit to account for the equal residential time and/or support obligation of the other parent?

III. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1) May the Superior Court deny a residential credit entirely when the parents share equal residential custody of the children based upon a disparity in income?

2) Who is the support obligor and support obligee when the parents equally share residential custody of the children?

3) When parents equally share residential custody of children, is an offset required to account for each parent's child support obligation prior to setting the transfer payment?

4) May the Superior Court place the entire child support obligation on one parent when the parents share residential

custody on the basis that there is a discrepancy in income?

5) Did the Superior Court properly exercise its discretion when ordering one parent to pay his full proportional share of child support, without any credit or offset to account for the other parent's proportional share of child support in a shared residential custody situation, on the basis that it is in the best interest of the children?

6) Are additional findings of fact regarding insufficient funds in one parent's household required when a court denies a residential credit/offset in a shared residential custody situation?

7) Does the legislature's intention to equitably apportion child support permit a judge to use his discretion in placing the entire child support obligation on one parent?

IV. STATEMENT OF THE CASE

Petitioner Chad Langford and Respondent Shannon Langford were

married on May 26, 2000 in Las Vegas, Nevada. CP 194. During the marriage, the parties had two (2) children. Id. A dissolution action was filed in May 2012. CP 191-197. At such time the children were 6 and 5 years of age. CP 194. A temporary parenting plan was entered prior to trial. CP 180-188. The temporary parenting plan provided each parent with an equal amount of time as exchanges occurred every Sunday at 7 p.m. CP 180-188.

The parties went to trial in May, 2013. The trial took approximately 5 days over an extended period of time due to judge availability. The newly appointed Honorable Judge Salvador Mendoza presided. This was the first domestic matter Judge Mendoza was assigned. Prior to appointment, the Judge's legal background consisted of primarily criminal matters. At trial, the parties stipulated to equal custody with alternating weeks, but disputed specific provisions in the parenting plan. The court was also asked to determine the appropriate division of all assets including the husband's one-third (1/3) business interest and the wife's retirement account and set child support. CP 73-79. Shannon Langford did not seek spousal maintenance nor attorney fees. CP 76. This appeal concerns only the court's order on child support. CP 6-7.

Shannon Langford has maintained employment by the State of Washington DSHS for over 18 years. In the year 2012, Shannon Langford earned approximately $52,000. CP 159. Chad Langford had varying income levels over the years due to owning a one-third (1/3) share of a business. CP 51. As a result, the court held a four (4) year average would apply to Mr. Langford's income for purposes of completing the child support worksheets. CP 51. In the final analysis, the court found that the mother's monthly net income was $3,429.46 and the father's monthly net income was $6,998.32. CP 48-52, TP 24. Chad Langford does not dispute the court's ruling with regard to the parties' incomes.

Rather, in his trial brief, Chad Langford proposed a residential credit using a formula based upon the equal residential time he spends with the children. CP 154. According to the proposed formula, the transfer payment before application of the residential credit was $1,485.89, representing a 71% proportional share of the parties' combined income. CP 154. After application of the residential credit, Mr. Langford proposed a transfer payment to Shannon Langford in the amount of $472.89.[3] CP

[3] Such amounts differ slightly from the worksheets adopted by the court because the figures are based upon a proposed worksheet prior to trial.

154. Chad Langford argued that each party would incur equal increased expenses for the two (2) weeks each month the children resided in their respective households. Shannon Langford did not address child support nor the residential credit in her trial brief. CP 122-126.

After trial, the court rendered a verbal ruling on all issues. With regard to child support, the court said very little. In fact, Judge Mendoza's only comments were as follows:

> "With regard to the residential credit, there was argument that it should be granted. And the Court in the past, actually I believe Commissioner Potts did grant a $500 residential credit. Mr Langford proposed a $1,000-some-odd dollars credit. And I considered the testimony, and I considered what would be in the best interest of the kids, and I thought a lot about this particular issue. I felt that was important, keeping in mind the statute and keeping in mind the testimony that was provided to this Court. And so I'm not going to grant the residential credit in this case. I do not believe that it's appropriate, and I'm not going to grant that." TP 24-25.

After the court's oral ruling and prior to entry of the final order of child support, Chad Langford filed for reconsideration. CP 121.

Specifically, Mr. Langford claimed the court committed error by denying any credit or offset to the father given the equal residential custody, that the court failed to account for the mother's child support obligation when refusing to issue a credit/offset, and that the court's reasoning in support of its denial was insufficient. CP 105. The court issued no further comments or additional reasoning when denying the motion for reconsideration. CP 103 and CP 90-91.

On September 5, 2013, the court entered findings of fact and the final order of child support was entered. CP 73-85, CP 38-52. With regard to the residential credit, the court's findings of fact, provides only the following:

> "The court has heard extensive argument regarding the application of a residential credit for the father for calculating his monthly support obligation. The court has found that no residential credit shall be granted to the father." CP 78.

The final order of child support lists Chad Langford as the Obligor. CP 39. The attached worksheets show that Shannon Langford's proportional share of income is 32% and Chad Langford share is 67%. CP 48. Accordingly, each parent's basic child support obligation is $1,410.44 to Chad Langford and $691.56 to Shannon Langford. CP 49. The standard

calculation (also referred to as the presumptive transfer payment) shows $1,449.36 to Chad Langford and $652.64 to Shannon Langford. CP 50. Without any credit or offset, the order required only Chad Langford to pay child support to Shannon Langford in the total amount of $1,449.36 each month.[4] CP 38-47. The final order indicates "the child support amount ordered in paragraph 3.5 does not deviate from the standard calculation", despite Shannon Langford not paying any amount nor any offset to reflect her portion of the support obligation shown. CP 41. Further, the final order suggests the deviation sought by the obligor (Chad Langford) was denied because: "a large disparity in the parties income. It is in the best interest of the children for the father to pay the full monthly transfer payment without deviation." CP 41.

Chad Langford timely filed notice of appeal and now petitions this court for relief from the trial court's final order of child support. CP 6-7.

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[4] The net incomes of the parties after the court ordered transfer payment is as follows: Shannon Langford: $4,878 compared with Chad Langford: $5,549. It is assumed that the court was attempting to equalize the parties' income when fashioning its ruling on child support.

IV. ARGUMENT

A. Standard of Review.

The legal landscape shaping these issues justifies warrants de novo review. Normally, a lower court's decision on child support signifies a discretionary ruling. For this reason, Mr. Langford alternatively proposes the de novo standard of review.

Typically, a trial court's decision on an order of child support is reviewed for an abuse of discretion. **State ex rel M.M.G. v Graham**, 159, Wn.2d 623, 632, 152 P.3d 1005 (2007). A trial court abuses its discretion when its decision is manifestly unreasonable, based on untenable grounds, or made for untenable reasons. **In re Marriage of Bowen**, 168. Wn.App. 581, 586–87, 168 Wash.App. 581, 279 P.3d 885 (2012), *review denied,* 176 Wash.2d 1009, 290 P.3d 994 (2012). A trial 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 not meet the requirements of the correct standard. **Bowen**, 168 Wash.App. at 586–87, 279 P.3d 885; *see also* **Larsen v. Larsen**, 43025-8-II, 2013 WL 5592968 (Wash. Ct. App. Oct. 8, 2013). Here, the newly appointed Judge Mendoza abused his discretion by ordering child support without any credit or offset in light of the equal residential schedule. Such decision was manifestly unreasonable, based on untenable grounds, and/or was made for untenable reasons.

On the other hand, questions of law are reviewed de novo. **In re Marriage of Waters and Anderson,** 116 Wn. App. 211, 215 (2002). Statutory meaning is a question of law. **In re Parentage of J.M.K**, 155 WN.2d 374, 386-87, 119 P.3d 840 (2005). The questions raised herein suggest the trial court failed to properly analyze the law and/or fulfill the legislative intent behind the child support statute. The Washington State Legislature enacted the child support schedule, in part to ensure that child support is equitably apportioned between parents. RCW 26.19.001. Additionally, the basic child support obligation, which is derived from the economic tables, is allocated between parents based on each parent's share of the combined monthly net income. RCW 26.19.080. The court here

used the worksheets but failed to allocate the support obligation 'equitably' between the parents in light of the 50/50 residential schedule. As a result, a legal question arises as to whether such result is permissible under the law. Perhaps the law is ambiguous and requires further interpretation. Accordingly, this court should apply de novo review.

Further, in split custody cases, the Appellate Courts have determined that the *Arvey*[5] method applies. See **State ex rel. M.M.G. v Graham**, 123 Wn.App 931 (2004), **Waters v Anderson**, 116 Wn.App 211 (2002), **Cleven v Cleven**, 107 Wn.App. 1042 (2001). Such cases have adopted and employed a de novo review standard. Id. Conversely, the Supreme Court advised that **Arvey** does not apply to equally shared residential parenting plans (i.e. alternating weeks) despite the similarities. **State ex rel. M.M.G. v Graham**, 159 Wn.2d 623, 636, 152 P.3d 1005 (2007). Nevertheless, when reviewing cases that mistakenly applied or failed to apply **Arvey**, courts utilize a de novo review standard. See **In re Marriage of Waters**, 116 Wn.App. 211, 215 (2002); **State ex rel. M.M.G. v Graham**, 123 Wn.App 931 (2004). Consequently, several

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[5] In re the Marriage of Arvey, 77 Wn.App. 817, 894 P.2d 1346 (1995).

reasons exist for this court to employ a de novo standard to the instant case: 1) there is no Washington case to specifically address how a lower court should analyze an equally shared residential arrangement for child support purposes; 2) authority is needed who the obligor and obligee should be in equally shared residential arrangements; and 3) shared residential and split residential cases are substantially similar in that two households are maintained for children to whom support is required of both parents such that tne same review standard is appropriate. Hence, de novo review is highly warranted and desired.

B. The decision of the trial court is manifestly unreasonable and based on untenable reasons.

Chapter 26.19 RCW directs a specific process a trial court must follow before entering an order of child support. The court must first apply the child support schedule. RCW 26.19.035(1)(c)("The child support schedule shall be applied .... [i]n all proceedings in which child support is determined."). The court begins by setting the basic child support obligation, which is the "monthly child support obligation determined from the economic table based on the parties' combined monthly net income and the number of children for whom support is owed." RCW

26.19.011(1); see also RCW 26.19.020 (child support economic table); **State ex rel. M.M.G. Graham**, 159 Wn.2d 623, 632, 152 .3d 1005 (2007). The economic table is presumptive for combined monthly incomes of $12,000 or less. RCW 26.19.020, .065. In the instant case, the net monthly income is below this threshold such that the economic table is presumptive.

1. The court incorrectly concluded that the father is the sole obligor under an equally shared residential custody arrangement.

The court must allocate 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 parent to the obligee parent under the child support schedule, before consideration of either an upward or downward deviation. RCW 26.19.011(8); **Graham**, 159 Wn.2d at 627. The court incorrectly concluded that Shannon Langford is the sole support obligee. There is no authority guiding the court as to which parent, in an equally shared residential situation properly receives this favorable designation. Chad

Langford argued that both parents are both support obligors and obligees since each parent provides 'primary residential care' for the children. CP 11-113. Thus, he argued, an offset was appropriate to adequately show both parties' support obligation. Clearly, each parent's household incurs increased expenses during the week the boys are residing and decreased expenses the following week when they are with the other parent. Nevertheless, the record lacks any foundation or basis as to how the court determined the mother alone would be designated as the child support obligee. Most importantly, the records contains no factual findings to support the court's determination that Shannon Langford is the support obligee verses Chad Langford. See CP 73-85.

2. The trial court failed to properly allocate the support obligation.

Under Washington law, RCW 26.19.080(1) requires the trial court to 'allocate' the support obligation between parents based on the each parent's share of the combined monthly net income. Pursuant to the worksheets, Shannon Langford's proportional share of income indicates that she is to provide 32% of the children's financial support. CP 48. Such figure amounts to $652.54 monthly. CP 50. Thus, the standard calculation/presumptive transfer payment owed by Shannon Langford (as

the mother) is $652.64. Conversely, Chad Langford's standard calculation/presumptive transfer payment is $1,449.36. Since the court somehow determined Shannon Langford is the only parent to whom support is owed, it ruled Chad Langford shall pay the presumptive transfer amount of $1,449.36 without any offset to account for Shannon's proportional share of child support. CP 38-41. In essence, the Superior Court here placed the entire child support obligation on Chad Langford, whereas the mother, Shannon Langford keeps her $652.64 (her proportional amount) and receives $1,449.36 (Chad's proportional amount). In essence, the mother, who only has the children for 2 weeks per month, collects nearly $100 each day the children reside with her. Along these lines, the father is paying $1,449.36 per month while also providing a household and incurring increased expenses for the 2 weeks each month the boys reside in his home. The result is illogical, unjust, and manifestly unreasonable. Clearly the court failed to allocate the support obligation.

3. The court's order fails to comply with the legislative intent.

When enacting the child support statutes, the legislature intended courts would 'equitably' apportion the support obligation. RCW 26.19.001

provides:

> "The legislature intends, in establishing a child support schedule, to insure that child support orders are adequate to meet a child's basic needs and to provide additional child support commensurate with the parent's income, resources, and standard of living. The legislature also intends that the **child support obligation should be equitably apportioned between the parents**." (Emphasis added).

Chad Langford suggests the Superior Court failed to equitably apportion anything. Despite equal custody placement, Mr. Langford alone provides all of the children's financial support when the children are in his home and during the time they stay with the mother. The court had two opportunities to equitably apportion the support obligation. First, the court failed to recognize the father's status as a joint obligee and offset the obligation. Secondly, the court could have ordered a residential credit to reflect the equal time. Failure to do either shows the court did not make a fair and/or equitable assessment concerning child support. Moreover, there are no factual findings to suggest the court denied a credit or offset for purposes of meeting the children's basic needs. Accordingly, the facts fail to support the court's erroneous ruling.

Washington law further shows that "placing the entire child

support obligation on one parent where the residential schedule is shared also would not meet the Legislatures' intention of equitably apportioning the child support obligation between both parents." **State ex rel. M.M.G. v Graham**, 123 Wn.App. 931 (2004). Since the trial court's order places the entire support obligation on Mr. Langford where the residential schedule is shared, the order contravenes legislative intent.

4. The court's order to deny a deviation is flawed and unsupported by adequate factual findings.

The court next determines whether it is appropriate to deviate from the standard calculation[6]. RCW 26.19.011(4), (8); **Graham**, 159 Wn.2d at 627. The trial court may exercise its discretion and deviate from the standard calculation based on a variety of factors, including the children's residential schedule. RCW 26.19.075(d). If the court considers a deviation based on the residential schedule, it must follow a specific statutory analysis that takes into account whether and how a deviation will affect

[6] For clarity and argument preservation, Chad Langford suggests the trial court should have considered both parties' standard calculation and performed an offset prior to analyzing the deviation request. In other words, each party pays the other the standard calculation. See **Holmes**, infra. In the alternative, Chad Langford argues that the court should have considered a deviation as outlined in the residential credit formula he previously proposed. See CP 154.

both the parent receiving the support transfer payments and the parent making the support transfer payment. The statute allowing for such deviation provides:

> "Residential schedule. 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(d).

While the statute directs the court to use its discretion, such discretion is not unfettered. **In re Marriage of Turksel & Bernhardt**, 149 Wn.App. 1005 (2009). The trial court properly determined the basic support obligations as $1,051.00 per child and, on paper, allocated 67% of the support obligation ($1,449.36) to Mr. Langford, but the remaining 33% (or $652.64) required of the mother is not accounted for in the order.

Chad Langford contends that while the court correctly identified the basic support obligation and proportional shares of income, the court incorrectly concluded that the standard calculation/transfer payment applied as if the mother had primary residential custody. Thus, if the court was going to apply the standard calculation/transfer payment, then a deviation of some amount, was warranted since the parties share equal custody. Under these facts, the court's decision to deny any residential credit is manifestly unreasonable and tantamount to an abuse of discretion.

Additionally, since the court failed to include findings to support a denial of the residential credit, namely a finding that issuance of a credit will result in insufficient funds in the mother's household, the court's order is further erroneous. See RCW 26.19.075(d). The record fails to reveal whether the trial court gave any consideration to whether the reduction in court ordered transfer payment would result in insufficient funds to meet the children's needs for purposes of adequately denying a request for deviation. RCW 26.19.075(3) requires the trial court to state findings as to why it did or did not grant a requested deviation. Moreover, there is not even a mere scintilla of evidence in the record to suggest that the mother's monthly income of $3,429.46 is insufficient to meet the basic

needs of the children during the limited time they spend in her household. As a result, the court's child support order is in error and must be vacated.

5. The disparity between the parties' incomes likewise fails to provide a sufficient basis to support the trial court's decision.

Presumably, Judge Mendoza found that the parent with the larger income must necessarily make the child support transfer payment. CP 41. Unfortunately, there is no legal basis for this conclusion. In fact, a mother attempted the same type of an argument in **Marriage of Holmes**, 128 Wn.App. 727, 117 P.3d 370 (2005), which was ultimately rejected. In support of her position, the mother relied on **Marriage of Casey**, 88 Wn.APp. 662, 665, 967 P.2d 982 (1997), for the proposition that the father should make a child support transfer payment to her despite the fact that the child resided a majority of the time with the father. **Holmes**, 128 Wn.App. at 737. Specifically, the court in **Casey** stated:

> RCW 26.09.100(1) requires the trial court, after considering "all relevant factors," to order either or both parents to pay child support in an amount determined under RCW 26.19. The trial court calculates the total amount of child support, allocates the basic support obligation between the parents "based on each parent's share of the combined monthly net income," RCW 26.19.080(1), then orders the parent with the greater obligation to pay the other a "support

transfer payment." RCW 26.19.011(9).

However, the **Holmes** court expressed that the portion of the above quote stating "[t]he trial court ... then orders the parent with the greater obligation to pay the other a 'support transfer payment'" **is erroneous**. 128 Wn. App. at 737 (Emphasis added). Rather, RCW 26.19.011(9) defines 'support transfer payment' as "the amount of money the court orders one parent to pay to another parent or custodian for child support after determination of the standard calculation and deviations." The court plainly stated that this subsection does not direct which parent is to make the payment. 128 Wn. App. at 737.

The noncustodial mother in **Holmes** further argued that even though both parents have support obligations under the statute, RCW 26.19.075(2) requires the court to order each parent "to pay the amount of support determined by using the standard calculation." Id. She reasoned that one parent or the other will have a greater obligation based on proportional income, making him/her presumptively responsible for the net support transfer payment before any consideration of the reasons to deviate. Id. The court again disagreed offering the following explanation:

> RCW 26.19.075 establishes the standards for deviations from the standard calculation. But unless the court finds reasons for a deviation, RCW 26.19.020, not RCW 26.19.075, governs calculation fo the presumptive support obligation. The function of RCW 26.19.075(2) is to preclude a deviation from being granted unless (1) the parties have fully disclosed their resources and (2) the court enters specific reasons for the deviation. Nothing in RCW 26.19.075 requires that each parent make a payment to the other or assumes that the parent with the greater presumptive support obligation will be responsible for a net transfer payment. Instead, RCW 26.19.075(2) merely affirms that absent a basis for deviation, each parent will pay the amount of the standard calculation to the other, if that parent is obligated to make a transfer payment.
>
> **Holmes**, 128 Wn. App. at 737-738. (Emphasis added).

The above reading of RCW 26.19.075 is supported by the child support worksheets themselves, which are required by RCW 26.19.050 and appended to chapter 26.19 RCW. The child support worksheets provide for a calculation of basic child support obligation and a presumptive transfer payment for each parent, but do not provide for the calculation of a net support transfer payment. Id. Historically, child support payments have been the obligation of the noncustodial parent. Id. Nevertheless, it was the province of the superior court to determine which

parent would pay child support and how much would be paid. **Holmes**, 128 Wn.App at 738. The historical presumption was reflected in the Uniform Child Support Guidelines, which were approved in 1982 by the Washington State Association of Superior Court Judges. Id. Under the ASCJ Guidelines, "the support to be paid by the non-custodial parent is that fraction of the scheduled amount in the proportion that the parent's income bears to the total income of both parents." Washington State Child Support Commission, Final Report, November 1, 1987, at 6. The obligation of the custodial parent was satisfied by providing for the child in that parent's home, as evidenced by the fact that the custodial parent received a support payment and did not make one. Id. However, these guidelines were replaced by the child support guidelines as adopted by the Washington Child Support Commission and as subsequently enacted by the legislature as chapter 26.19 RCW. Yet, such chapter focuses on the method of calculation of child support, not on which parent would make payment to the other. The latter determination is made pursuant to RCW 26.09. **Holmes**, 128 Wn.App. at 739.

Nevertheless, as part of the Parenting Act, the legislature removed the concepts of custody and visitation from the dissolution statute, RCW

26.09. In their place the legislature imposed the general requirement of a parenting plan for the child that establishes a residential schedule, allocates decision-making authority between the parents, etc. See RCW 26.09.184(2). 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 RCW 26.19. However, the legislature did not change the historical presumption in practice that the parent with whom the child resided a majority of the time would satisfy the support obligation by providing for the child while in his or her home and that the other parent would make a child support transfer payment. As the court recently noted,

> "[i]n those 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 and that parent makes a transfer payment to the parent with whom the children primarily reside."
>
> **State ex rel. M.M.G. v Graham**, 123 Wn.App at 939.

Of course this presumption is not without exception. The exception is created by deviation based upon a finding that the income of the parent

with whom the child does not reside a majority of the time is insufficient to provide for the basic needs of the child. RCW 26.19.075(1)(d). In **Holmes,** the court found that a large disparity in incomes was immaterial. 128 Wn.App. at 741. After noting the large disparity in Holmes, the court stated that the relevant issue was whether a deviation should be granted, "[t]his requires a showing of need by [the child] for greater support while in his mother's home, not merely a significant difference in income of the parents." Id. The trial court went on to make a number of findings about the lifestyles, expenditures, and needs of the parties. Most significantly, the trial court found the mother had sufficient money on her own to pay for the immediate expenses of the child while he was with her, without any financial assistance from the father. Id. Clearly, as discussed above, the record here lacks any similar findings in order to properly support the superior court's basis for a denial of a deviation/residential credit. Indeed, the court's purported basis concerning a large disparity between the Langfords' incomes fails far short of what the law requires when denying a deviation.

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V. CONCLUSION

Based on the forgoing reasons, Chad Langford respectfully requests the court vacate the child support order at issue.

DATED this 11th day of December, 2013.

Respectfully submitted,

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CLARE & RUFF, P.S.
Attorneys for Chad Langford

By: _____
ANDREA J. CLARE,
WSBA NO. 37889

CERTIFICATE OF SERVICE

I hereby certify that on the 11 of December, 2013, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

☑	Hand-delivered	Steve DeFoe
☐	First-Class Mail	Defoe Pickett Law Office
☐	Overnight Mail	830 N. Columbia Center Blvd.
☐	Facsimile	Ste A1
☐	Pronto Process	Kennewick, WA 99336

Susan E Bagan

of Leavy, Schultz, Davis, Clare & Ruff, P.S.