NO. 319610-III

COURT OF APPEALS FOR DIVISION III

STATE OF WASHINGTON

SHANNON MARIE LANGFORD,

Respondent,

vs.

CHAD FRANKLIN LANGFORD,

Appellant.

APPELLANT'S REPLY BRIEF

LEAVY, SCHULTZ, DAVIS, CLARE & RUFF, P.S.
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I. REPLY

1) The Trial Court Committed Error.

Shannon Langford mistakenly argues 'a large disparity of the parties income' is a sufficient basis to justify the trial court's decision denying a deviation in a shared residential schedule. *See* Respondent's brief, p. 11; see also CP 41. Her assertion is contrary to the law. Nevertheless, absent quotations, she cites RCW 26.19.075 (1) "explicitly" to support her conclusion. Shannon Langford employs mandatory language to suggest: "the court must base their decision on such factors as the *parents' income and expenses...*" (Emphasis in original). Id. However, RCW 26.19.075(1) does not provide such rule. In fact, there is no statutory or case law to justify a denial of any residential credit in a shared residence parenting plan based on 'a large disparity of incomes'.

To the contrary, in **Holmes**, *infra*, the court noted a great disparity in incomes but dismissed its significance stating "the relevant issue is whether a deviation should be granted." 128 Wn.App. at 471. Likewise, the **Graham**, *infra*, court specifically found that in shared custody situations the lower court may still determine one parent is the obligor --

but it may not base this determination on that parent's greater income alone. 123 Wn.App. at 940-41. Yet, in Langford the trial court did exactly that.

Recently, Division I of the Court of Appeals handed down **In re Marriage of Schnurman**, 316 P.3d 514 (2013). While Shannon Langford would like the same result as **Schnurman**, the analysis shows that the court here missed the mark. In **Schnurman**, the parties enjoyed a shared residential schedule with 2 children (ages 6 & 8). Id. The wife earned $1,380 in net income each month. Id. In light of her financial need, the court awarded Mrs. Schnurman $2,000 in spousal maintenance, resulting in a $3,380 net income figure for purposes of calculating the child support obligation. Based on the standard calculations, the court ordered Mr. Schnurman to pay $1,300 in child support. In denying Mr. Schnurman's request for a downward deviation, the lower court found the following:

> "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 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**." Id. (Emphasis added).

Significantly, Mr. Schnurman argued that no transfer payment should have been awarded because Washington has not yet determined the

proper method for calculating the amount of transfer payment when parents share equal residential time. The **Schnurman** court, relying on **State ex rel. MMG. v Graham**, 123 Wn. App. 931, 933 (2004), disagreed that there was not an adequate method in shared residential situations.

In its analysis, the **Schnurman** court started by stating the child support statutes purpose: "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. Further, it recognized "[t]he legislature also intended child support obligations to be "equitably apportioned between the parents". Id.

Then, the court stated, 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. 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 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).

If the court considers a deviation based on residential schedule, as it did here, the **Schnurman** court stated, "it must follow a specific statutory analysis". Additionally, according to **Schnurman**, "[t]he trial court must enter written findings of fact supporting the reasons for any deviation or denial of a party's request for deviation. 316 P.3d 514, (citing 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. Id. (citing RCW 26.19.011(9).

In the end, the **Schurman** court determined that the lower court followed the mandated process and therefore no error was committed. Most critical to its conclusion, the appellate court noted that the lower court found that Mrs. Schurman would have been left with insufficient funds if a downward deviation were granted. **In re Marriage of Schurman**, 316 P.3d 514 (2013). As a result, the lower court was affirmed. Hence, despite the **Schurman** case having some resemblance to the instant case, the lower court here did not find Shannon Langford had

insufficient funds when denying Chad Langford's request for deviation. Such failure is erroneous and constitutes an abuse of discretion.

Most importantly, unlike **Schurman**, the record here shows Shannon Langford **has** sufficient funds. Shannon Langford holds a bachelor's degree and worked continuously throughout the marriage. In fact she has maintained a career with the State of Washington DSHS for over 18 years, in a supervisory capacity. She has medical, sick leave, and vacation benefits through her employment. Additionally, as a result of her long term state employment, Shannon Langford has acquired a $57,527.26 PERS plan to which she was fully awarded upon decree. CP 67. In regards to the division of debts and assets, Shannon Langford received only $2,253 of community debt compared to Chad Langford's $62,053.24 debt balance. CP 84. Finally, Shannon Langford was awarded $108,856.32 in community assets (CP 82) and an additional $30,000 in home equity. CP 74. The court's failure to find insufficient funds here is simply because is no evidence to support such a finding. This court can take judicial notice. Likewise, Shannon Langford did not request spousal maintenance or otherwise argue she would be left with insufficient funds if a deviation were granted.

In re the Marriage of Holmes, 128 Wn.App. 727 (2005), another Division I case, is instructive to the instant case. In **Holmes**, the mother argued that, irrespective of which parent had residential placement, the parent with the larger income is statutorily presumed to make the support transfer payment. **Holmes**, 128 Wn.App. 736. The court rejected her argument as erroneous stating "unless the court finds reasons for a deviation, RCW 26.19.020, not RCW 26.19.075, governs calculation of the presumptive support obligation." The court further explained, "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." The **Holmes** court recognized "[t]he child support worksheets provide for calculation of a 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. **Holmes**, 128 Wn.App. at 738 (emphasis in original).

Despite Division I's conclusion that lower courts are adequately equipped to set child support in shared residential situations, Mr. Langford humbly seeks a second review by this court. Chad Langford respectfully requests the court provide some guidance as to how the lower courts

should set or determine child support in shared residential situations specifically when there is no evidence to indicate there would be insufficient funds in either household. Several cases have come to the court pleading for such guidance. Chad Langford proposes a formula of off-setting the two standard calculations which would provide a bright line rule to employ in similar circumstances. Such a rule would further the legislative intent and prevent abuses, inconsistent results, and/or mistakes below[1].

2) Attorney Fees Should be Denied.

Shannon Langford requests fees on appeal based on RCW 26.09.140. The power of the court to award fees pursuant to said statute is discretionary. Shannon Langford further cites RAP 18.1(a) and (b). However, Shannon Langford offers no argument or justification as to why such an award is appropriate here. She fails to provide a basis of need or offer any analysis whatsoever. Most importantly, Shannon Langford failed to request fees below. Thus, there is no finding by the trial court

[1] "Placing the entire child support obligation on one parent where the residential schedule is shared also would not meet the legislative intention of equitably apportioning the child support obligation between both parents." **State ex rel. M.M.G. v Graham**, 123 Wn.App. 931 (2004) (*citing* RCW 26.19.001).

concluding Mrs. Langford to be in need. CP 76 and CP 79. Any fee award would be wholly inappropriate on appeal.

DATED this 13th day of March, 2014.

Respectfully submitted,

LEAVY, SCHULTZ, DAVIS, CLARE & RUFF, P.S.
Attorneys for Chad Langford

By: _____
ANDREA J. CLARE,
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CERTIFICATE OF SERVICE

I hereby certify that on the 14 day of March, 2014, 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.
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_____
KRISTI FLYG,
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