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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 319610-III

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

SHANNON MARIE LANGFORD
Respondent,

v.

CHAD FRANKLIN LANGFORD
Appellant.

BRIEF OF RESPONDENT

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I. INTRODUCTION

The Respondent requests that the court affirm the trial court's ruling on child support. The appellant contends that the child support schedules set forth in RCW 26.19 do not address the appropriate method of calculating child support in situations where parents share equal residential time. This is incorrect. The Washington State Supreme Court has held that the statutory child support schedule applies in shared residential placement situations. **State ex rel. M.M.G v. Graham**, 159, Wn.2d 623, 632, 152, P.3d 1005 (2007); **State ex rel. M.M.G. v. Graham**, 123 Wn. App. 931, 933, 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). The trial court's ruling should be upheld.

II.STATEMENT OF CASE

The parties were married on May 26, 2000 in Las Vegas, Nevada. (CP 194). Together they have two children, who were 6 and 5 years old when the parties began their dissolution action. (CP 194). The respondent, Shannon Langford, filed for divorce on May 17, 2012. (CP 191-197). A temporary parenting plan was entered on August 27, 2012, wherein the

parties shared residential placement with the children equally and exchanged the children every Sunday at 7:00 p.m. (CP 180-188).

The parties began their 5 day trial on May 15, 2013. The Honorable Judge Salvador Mendoza presided. At trial, the parties stipulated to a final parenting plan, with the exception of a few provisions relating to school breaks. The issues of child support and the division of debts and assets were those to be determined by the court. (CP 73-79).

The court was tasked with determining the average income of the parties in order to determine child support. Shannon Langford has worked for the State of Washington DSHS for over 18 years. The court used her 2012 income in determining child support, and found that her monthly net income was \$3,429.46. (CP 48-52). Chad Langford's monthly net income was determined to be \$6,998.32. (CP 48-52). Mr. Langford's monthly net income doubles that of Shannon Langford. Neither party disputes this.

Mr. Langford requested a downward deviation in the transfer payment based on equal residential placement of the children. (CP 154). Judge Mendoza decided that a residential credit was not appropriate, and declined to grant one. (RP 24-25).

Mr. Langford filed a motion for reconsideration with regard to the child support ruling. (CP 121). Shannon Langford filed a memorandum in response to Chad Langford's motion for reconsideration. (CP 93-102).

Shannon Langford argued that the court did not abuse its discretion in denying the deviation; the court's ruling was not contrary to the law and did not constitute a substantial injustice to Chad Langford. (CP 93-102). Judge Mendoza denied the motion for reconsideration. (CP 103 and CP 90-91).

Findings of Fact and the Final Order of Child Support were entered on September 5, 2013. (CP 73-85, CP 38-52).

Chad Langford timely appealed. (CP 6-7). Shannon Langford requests that the trial court's ruling be upheld.

III. ARGUMENT

A. Standard of Review.

The issue within this case is subject to the abuse of discretion standard. A trial court's order of child support is reviewed for abuse of discretion. **In re Marriage of Booth**, 114 Wn.2d 772, 776, 791 P.2d 519 (1990). A trial court abuses its discretion if its decision rests on unreasonable or untenable grounds. **Dix v. ICT Grp., Inc.** 160 Wn.2d 826, 833, 161 P.3d 1016 (2007). A trial court necessarily abuses its discretion if its ruling is based on an erroneous view of law or involves incorrect legal analysis. **Id.**

The decision is reviewed “for substantial supporting evidence and for legal error.” **Spreen v. Spreen**, 107 Wn. App. 341, 346 (2001). “Substantial evidence supports a factual determination if the record contains *sufficient evidence* to persuade a fair-minded, rational person of the truth of that determination.” (*Emphasis added*) **Spreen**, at 346. Unchallenged findings of fact are verities on appeal. **State v. Hill**, 123 Wash.2d 641, 870 P.2d 313 (1994).

B. The decision of the trial court is not manifestly unreasonable or based on untenable reasons.

Judge Mendoza did not abuse his discretion as his ruling was based upon a correct view of the law and correct legal analysis. A recently published Division One Court of Appeals decision mirrors the facts contained within this case. **In re Marriage of Schnurman**, Wn.1d, 316 P.3d 514 (2013). This case affirms that Washington Law and legislature have determined the proper method for calculating child support when parents share equal residential time. A summary of relevant facts are as follows:

The **Schnurman** case involves parties dissolving a 10 year marriage, wherein a final parenting plan was entered granting shared and equal residential time with the children. The trial court found father’s

income to be \$6,338, mother's income to be \$3,380.00, and named father as the obligor. Father was ordered to pay the standard transfer amount of \$1,300.00. Father requested a downward deviation and was denied on the basis that the father could not prove having the children half the time would significantly increase his costs to support the children or reduce wife's expenses for the children. The trial court also found that a downward deviation would result in insufficient funds for the wife's household. Father appealed. **Id** at 516.

On appeal, father argued that the standard calculation did not apply in shared custody situations like theirs; that only a parent who has the children a majority of the time is entitled to child support; the trial court abused its discretion in awarding mom a transfer payment; Washington Legislature and Courts have determined the proper method for calculating child support in shared residential cases; and requested that the Court consider and equitably apportion the expenses each parent pays. **Id** at 517.

The Division One Court of Appeals disagreed with the father and upheld the trial court's decision. Their reasoning being that the Washington State Supreme Court, affirming Division One, previously held that the statutory child support scheduled applies in shared residential situations under **State ex rel. M.M.G v. Graham**, 159 Wash.2d 623, 626,

632, 152 P.3d 1005(2007). Additionally, that under RCW 26.19, the Child Support Schedule Statute, the legislature's intent was clear:

“...to ensure child support orders are adequate to meet a child's basic needs and provide adequate child support commensurate with the parent's income, resources and standard of living.” RCW 26.19.001. **Id** at 517.

The Court of Appeals also found that the **Graham** case controlled and determined the process for entering an order of child support in accordance with RCW 26.19.011(1). **Schnurman** at 518. First, the basic child support obligation is set from the table based on parent's combined monthly income and ages. Second, the trial court allocates the child support obligation between the parents based on each parent's share of the combined monthly income. RCW 26.19.080(1). Third, the court determines the presumptive amount of child support owed by the obligor parent to the oblige RCW 26.19.011(8). Fourth, if requested, the court can consider to deviate upwards or downwards from the standard calculation RCW 26.09.011(4)(8). The court has discretion to deviate from standard calculation based on factors like a parent's income and expenses, obligations to children from other relationships, and the residential schedule. If the court considers a deviation based on the residential schedule, specific statutory analysis is required as follows:

“(d) **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(1)(d) **Id** at 519.

Issue 1: The court correctly concluded that Chad Langford is the sole obligor under an equally shared residential custody arrangement.

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). **Marriage of Casey** 88 Wash. App. 662, 665, 967 P.2d 982(1997).

Chad Langford earns substantially more than Shannon Langford and has the higher obligation, therefore he is the “obligor” for child support, even with equal time.

Issue 2: The trial court did not fail to properly allocate the support obligation.

Chad Langford argues that the trial court failed to properly allocate the child support obligation. He is wrong. The Washington State Supreme Court has held that the statutory child support schedule applies in shared residential situations like the Langford’s. **In re MMG v. Graham**, 159 Wn. 2d. 623 (2007).

Graham, was a support modification case. The parties had two children (both over 12) and had equal residential time. Father was originally granted a deviation because of his substantial time with the children and because the reduction “did not leave [mother] with insufficient funds to meet the children’s needs.” **Id.**, at 628.

The state filed a support modification more than two years later. Father again requested a deviation and asked the court to apply the **Arvey** formula (formula when each parent has custody of at least one child **Marriage of Arvey** 77 Wash.App. at 819, 894 P.2d 1346.). Mother and the State objected to using this formula.

The trial court Commissioner granted the residential credit deviation but refused to apply the **Arvey** formula. **Graham.**, at 629. Father filed a motion to revise and the Judge reversed and applied the formula. **Id.**, at 630. Mother appealed and the Court of Appeals reversed yet again and refused to apply the **Arvey** formula. **Id.**, at 631. Mother petitioned for review and the Supreme Court accepted.

Father argued the **Arvey** formula should be applied to equal residential schedules “by analogy.” **Id.**, at 633. The Supreme Court cited two reasons for denying his request.

First, in a split residential situation, each parent has residential time with one or more children. If the children are different ages or have different needs, the parents' respective burdens are different and the child support obligation must take those differences into account, a fact the **Arvey** court acknowledged but did not resolve. Conversely, in shared residential situations, both parents are responsible for the same children and the same needs.

And second, because the statute explicitly gives the trial court discretion to deviate from the basic child support obligation based on the facts of a particular case, a specific formula is neither necessary nor statutorily required to ensure the parents' child support obligation is properly allocated.

Issue 3: The trial court did not fail to comply with the legislative intent.

The Legislative intent regarding child support is succinctly stated in RCW 26.19.001 (*Italics added*):

“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 parents' income, resources, and standard of living*. The legislature also intends that the child support obligation should be *equitably apportioned* between the parents.”

At trial, Chad Langford did not prove a deviation would not result in insufficient resources to Shannon Langford’s house, nor that it would be inequitable to order a child support transfer payment consistent with the child support guidelines.

Issue 4: The court’s order to deny a deviation is not flawed and is supported by adequate factual findings.

An order for child support shall be supported by written findings of fact upon which the support determination is based and shall include reasons for any deviation from the standard calculation and reasons for denial of a party's request for deviation from the standard calculation. RCW 26.19.035(2).

Judge Mendoza provided adequate factual findings, on several occasions. The Final Order of Child Support, signed by Judge Mendoza, explicitly states that a deviation was denied based on 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).

In its decision on Chad Langford’s motion for reconsideration, Judge Mendoza stated:

“I have reviewed my notes and the motions filed by both parties. However, the respondent [Chad Langford] has inadvertently misquoted or taken some of the Court’s statements out of context. After said review, the Court is denying Respondent’s motion.” (CP 90-92)

Issue 5: The disparity between the parties’ incomes does provide a sufficient basis to support the trial court’s decision.

RCW 26.19.075(1) explicitly states that in using its discretion to deviate from the standard calculation, the court must base their decision on such factors as the *parents’ income and expenses*, obligations to children from other relationships, and the children’s residential schedule. *Id.* (*Emphasis added.*)

RCW 26.19.075(1)(d), “[t]he 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,” subject to the terms and conditions below:

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. (*Emphasis added*).

Deviations remain “the exception to the rule and should be used only where it would be inequitable *not to do so*.” **Marriage of Burch**, 81 Wn. App. 756 761 (1996) (*Emphasis added*). They should be used if strict application of [the child support guidelines] would result in a significant disparity in the amount of support available for the children in each household. **Marriage of Oakes**, 71 Wn. App. 646, 652 (1993) (This case was addressing the split custody situation).

The amount of child support rests within the sound discretion of the trial court. **Marriage of Fiorio**, 112 Wn. App. 657 (2002). If the findings of fact and conclusions of law support a decision to deviate the court may then exercise its discretion to order an appropriate deviation

that will assure that both children are protected with adequate, equitable and predictable child support. **Oakes**, at 652.

The disparity between the parties' income does provide a sufficient basis to support the trial court's decision. The trial court exercised its discretion, and used that factor in making its determination.

Issue 6: Attorney's Fees and Costs: Shannon Langford should be awarded reasonable attorney's fees and costs on appeal.

"If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review, the party must request the fees or costs." RAP 18.1(a). The party must devote a section of the brief to the request for fees or expenses. **Id.** (b).

The decision to award fees under RCW 26.09.140 is discretionary and must be based upon a consideration that balances the needs of the spouse seeking fees against the ability of the other spouse to pay. **In re Marriage of Terry**, 79 Wn. App. 79 (1995).

IV.CONCLUSION

The trial court did not abuse its discretion in its findings of fact or conclusions of law. Deviations are the exception and not the rule. Chad Langford had the burden to prove a residential credit deviation was

warranted. Chad Langford had to establish that said deviation would not leave Shannon Langford with insufficient funds and that he had increased expenses (or decreased expenses for wife) because of his equal residential time. He failed to do so. The trial court's ruling should be affirmed.

Shannon Langford should be awarded attorney's fees for the necessity of responding to this appeal pursuant to RAP 18.1.

Dated this 2nd day of February, 2014.

Defoe Pickett Law Office

By:




Steve Defoe, W.S.B.A#25837
Attorney for Shannon Langford, Respondent.

CERTIFICATE OF SERVICE

I do hereby certify that on the 10th day of February 2014, I caused
to be served a true and correct copy of the foregoing by the method
indicated below and addressed to the following:

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