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No. 73119-0-I

IN THE COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In re the Marriage of:

KENNETH KAPLAN

Respondent / Cross-Appellant

And

SHEILA KOHLS-KAPLAN

Appellant / Cross-Respondent

BRIEF OF RESPONDENT / CROSS-APPELLANT

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I. INTRODUCTION.

Sheila Kohls and Ken Kaplan began their divorce proceedings in 2004. Since then, a mountain of litigation has ensued with both parties spending hundreds of thousands of dollars on attorney fees in the trial and appellate courts. Sheila returns again to this Court with her latest attorney, C. Nelson Berry III, for her fourth appeal. Sheila broadly challenges the trial court's discretionary decision to *increase* Ken's child support for the parties' 17 year old daughter as well as a host of other small decisions. However, Sheila's real dissatisfaction lies in the trial court's discretionary decision to award her $43,610.31 in attorney fees and costs instead of the $91,328.14 Berry incurred on her behalf.

Even though Ken paid the fee/cost award in full, Sheila refused to enter a full satisfaction of judgment. Berry filed a partial satisfaction of judgment on Sheila's behalf and attested to facts that were not accurate. Although the trial court ordered Sheila to execute a full satisfaction of judgment, the trial court denied Ken's request for attorney fees and sanctions under CR 11 without any findings or comment.

This Court should affirm the trial court's fact based discretionary decision regarding child support, and reverse the trial court's decision to deny Ken's request for CR 11 sanctions against Sheila and Berry. This Court should also award Ken his attorney fees on appeal, as it has done in

the past, and send a clear message to Sheila that Ken will no longer have to pay for her decision to continue this litigation at any cost.

II. ASSIGNMENTS OF ERROR – CROSS APPEAL.

The trial court erred by denying Ken's request for attorney fees and sanctions under CR 11 against Sheila and Berry for filing a partial satisfaction of judgment without providing any reason or basis for the decision. CP 3471-3473.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR – CROSS APPEAL.

Did the trial court abuse its discretion by failing to impose CR 11 sanctions against Sheila and Berry for entering only a partial satisfaction of judgment after they accepted Ken's full payment for attorney fees and costs when there was no factual or legal basis to continue to claim Ken owed prejudgment interest?

IV. RESTATEMENT OF THE CASE.

A. 2005 AGREED FINAL ORDER OF CHILD SUPPORT

Ken and Sheila entered an agreed Final Order of Child Support in February 2005 for their children Zachary (then 10) and Idalia (then 7). CP 1-13. The parties' agreed Ken's gross monthly income was $29,370.00 based on his wages from Lane Powell and his separate business income, and Sheila's gross monthly income was $9,000.00 based solely on spousal

maintenance paid by Ken. CP 8-13. Ken's transfer payment to Sheila was $1,534.00; representing an agreed upward deviation from the standard calculation of $1,029.00 based on "living standard of family." CP 3. Ken and Sheila agreed to share proportionally in the children's private educational expenses at Jewish Community School to if Ken proved he did not have funds for this purpose from his Father. CP 5.

B. 2010 PETITION FOR MODIFICATION

In August 2010, Sheila sought the State's assistance to modify the 2005 child support order. Zachary was 15 and Idalia was 12. CP 28-51. The State's petition alleged that more than two years had passed since the entry of the prior order, the parties' income had changed because Sheila was now employed and Ken was no longer paying maintenance, and the children had changed age brackets. CP 31. The State noted "it is unclear whether the basis for the deviation from the standard calculation in [the 2005] order still applies." CP 79. Additionally, Zachary and Idalia were attending University Prep. The annual tuition payment for both children was $52,000.00. Ken was paying 100% of that cost, and Sheila wanted him to continue to do so. CP 97, 171-172.

On December 20, 202010, following a trial by affidavit, the trial court entered its Order on Modification of Support and Order of Child Support. CP 191-207. The trial court found Ken was voluntarily

un/underemployed because he resigned his membership in the Washington State Bar to work full time in his own company, Kaplan Real Estate Services (KRES). CP 151, 192. The court set Ken's gross monthly income at $21,875.00 and his net income at $8,137.00 finding

> Father is self-employed, and, per his 2009 IRS return, earned interest/dividend income of $1157; had gross sales of $261,342; normal business expenses of $84,829 (excluding depreciation, travel/entertainment expenses), self-employment tax of $10,160. Figures divided by 12 for monthly average.

CP 205. This resulted in a standard calculation transfer payment of $1,928.00. CP 194, 202.

The trial court rejected Sheila's request to set child support at $4,539.00 per month "in excess of the standard calculation based on our combined income resources and standard of living." CP 132-133, 163. Instead, the trial court set Ken's child support at $1,500.00 per month ($750.00 per child), deviating downward from the standard calculation of $1,928.00 because it ordered Ken to continue to pay 100% of the children's tuition at University Prep. CP 194.

C. 2013 PETITION FOR MODIFICATION

1. Sheila's Petition For Modification and the November 22, 2013, Trial By Affidavit.

On June 7, 2013, Sheila filed a petition to modify child support. CP 211-234. Zachary was almost 19, and had graduated from high school.

Idalia was 15. CP 212, 215, 248. In her petition, Sheila, pro se, alleged the prior order was entered more than two years ago. She also alleged a substantial change in circumstances had occurred since the 2005 order entered because, among other things, "a parties' (sic) income may have changed substantially and the child's expenses have increased substantially" and "the previous order works a severe economic hardship...resulting in insufficient funds to meet the needs of the children." CP 212. Ken responded and denied that the grounds for a modification existed, and, if so, then Sheila should share in the expense for Idalia's private schooling. CP 247-254. Both parties filed proposed child support worksheets with their pleadings. See CP 215-219 (Sheila); CP 252-254 (Ken). Both parties also filed financial declarations, tax returns, and bank statements with their initial pleadings. CP 235-240, 241-246, 1952-1985, 1986-2059, 2060-2084.

Sheila hired counsel, C. Nelson Berry III (hereafter Berry), who launched a discovery juggernaut to determine Ken's income. See CP 573 (approximately 9 hours of depositions); CP 661-662 (discovery timeline regarding interrogatories and subpoenas); CP 695-783 (copies of subpoenas). In her 158 page initial trial affidavit, CP 268-426, and corresponding 995 pages of sealed financial source documents, CP 2085-3080, Sheila focused her arguments on Ken's income, ultimately alleging

it was $55,253.00 gross per month. CP 299, 323. Sheila made no argument to demonstrate the "substantial change in circumstances" required for a modification under RCW 26.09.170, and she made only one statement about Idalia's or Zachary's needs:

> I also request Ken continue to pay all of the educational expenses for our daughter, Idalia, at University Prep. It's certainly not possible for me to share those costs on my income. ... Also, since Zach resides with me when he comes home from school for vacations, and in particular during the summer, I request that Ken be ordered to pay me an additional $500.00 per month during the summer for his care, as part of his post-secondary support, since I will be providing for his reasonable necessities of life.

CP 302; See also CP 573-74, 579 (Sheila's discovery responses do not identify expenses she incurs for Idalia). Based on her calculation of Ken's net income of $54,837.00 per month, Sheila requested the court set Ken's child support payment at the standard calculation of $1,768.40 per month, without any upward deviation, order Ken to continue to pay 100% of Idalia's private schooling, and pay $500.00 per month for Zachary during his summer vacation from college. See CP 302 (Declaration), CP 315-327 (Proposed Child Support Order and Worksheets).

In his initial trial brief and corresponding declaration, Ken argued Sheila failed to meet her burden to demonstrate that a substantial change in circumstances existed or that the current order worked a severe economic hardship on Sheila. CP 427-448; CP 669. Ken argued that

Sheila's true motive for requesting a modification of support, rather than an adjustment of support, was because Sheila

> wants a do-over of the 2010 trial by affidavit. [Sheila] was extremely unhappy with the results of that proceeding and filed a motion for revision, but her motion was ultimately denied. ...[S]he is attempting to harass and intimidate [me] into capitulating to an unfavorable child support order by conduction massive, time-consuming and unnecessary discovery, all the while claiming that [I] will have to pay her escalating attorney's fees as well as [my] own, because, after all, she is only as school nurse and has no money to pay her own fees, an argument she has made time and again over the past nine years of litigation.

CP 434. In the alternative, Ken requested the trial court adjust the 2010 child support order, and set his income at $8,294.31 net per month using the same formula the court did in 2010 – gross business income less business expenses excluding depreciation and travel/entertainment. CP 669-670. Ken's child support worksheets set his obligation at $710.00 per month after giving him a credit for health insurance ($119.00) and Idalia's private school tuition ($2,417.00). CP 553-557.

Ken filed declarations from his accountant, Marianne Pangallo, and his bookkeeper, Richard Sobie, to support his calculation of his monthly net income. These declarations also refuted Sheila's arguments about the amount of depreciation and other business expenses that had to be added back to Ken's income, as well as Sheila's claims Ken was siphoning or embezzling money from KRES. CP 793-806 (Pangallo); CP

807-845 (Sobie); see also CP 671-675 (Ken's Response Declaration). Pangallo's declaration stated how she explained to Berry, during her lengthy deposition and a subsequent meeting at her office when he reviewed all of Ken's business records, that the business expenses Berry wanted to add back to KRES business income were inappropriate. See CP 794-799 (home office and telephone/fax expenses, insurance, legal and professional fees, lease payments, depreciation).

In her 124 page response, Sheila devoted 2 pages to cursory statements that the significant change in Ken's income was not contemplated in 2010 and that the 2010 order worked a severe economic hardship on her and Idalia, depriving Idalia of opportunities like guitar and voice lessons, ski bus trips, or summer camps. CP 857-859. In the 122 remaining pages of her response, CP 851-857, 860-975, and the 297 pages of additional financial information, CP 3081-3387, Sheila argued Ken's monthly net income was $76,829.86, an increase of $21,576.86 per month from her earlier calculation. Compare CP 869 with CP 299, 323. In her revised proposed support order, Sheila proposed a slightly higher transfer payment, $1,788.68, but still did not request any upward deviation. CP 980-903.

The parties appeared for trial before Commissioner Jacqueline Jeske on November 22, 2013. 11/22/13 RP 1-65. At the commencement

of the trial, Commissioner Jeske struck the supplemental memorandum of authorities Sheila filed that morning asking, for the first time, for an upward deviation of support. See 11/22/13 RP 5-6; CP 990-993. During trial, Sheila changed her position on Ken's income again. This time, she argued Ken's gross income was $35,720.02 per month. 11/22/13 RP 13; See also CP 1008 (new child support worksheet). Sheila also continued to request Ken pay for all of Idalia's private school education and argued "this is a case where extrapolation [is appropriate] given the disparity of wealth." 11/22/13 RP 16.

Ken argued Sheila had not met her burden of establishing a substantial change in circumstances sufficient to warrant a full modification. 11/22/13 RP 18-21, 26-27. In her oral ruling, Commissioner Jeske set Ken's income at $34,871.85, accepting Sheila's illustrative exhibit but rejecting Sheila's request to add back KRES expenses for key man and professional liability insurance. 11/22/13 RP 58; See also CP 1283-1284 (exhibit at trial with edits showing Commissioner's final calculation for Ken's income).

2. Commissioner Jeske's January 15, 2015, Orders Following Trial By Affidavit.

On January 15, 2014, following a contested presentation hearing, Commissioner Jeske entered an Order of Child Support. CP 1212-1226.

Commissioner Jeske set Ken's net income at $34,871.85, and his support payment at $1,712.84 per month. CP 1214-1215. The commissioner did not deviate upward but ordered Ken to continue to pay 100% of Idalia's tuition and other required educational expenses at University Prep. CP 1208, CP 1215. Commissioner Jeske also ordered Ken to pay Sheila $300.00 per month for post-secondary support for Zachary during the summer if he was residing with her. CP 1209, 1217.

Regarding Sheila's request for attorney fees, Commissioner Jeske made the following findings:

> Reasonable attorney's fees and costs should be ordered because the Respondent has the need for an award of reasonable attorney fees and costs, and the Petitioner has the ability to pay, pursuant to RCW 26.09.140.
>
> The Court does not find that the Petitioner engaged in intransigence regarding the disclosure of his true income.

CP 1207 (unchallenged findings). At the time the commissioner made this finding, Sheila was requesting $55,715.00 in fees and $5,360.31 in costs. CP 1188-1205 (Berry's fourth fee declaration). The commissioner awarded Sheila all of her costs and roughly 53% of her attorney fees finding:

> ...the mother has necessarily incurred reasonable attorney fees in the amount of $29,500.00 and costs in the amount of $5,360.31 which should be paid by the father.

CP 1209. Sheila does not specifically assign error to this finding on appeal. See Appellant's Brief, p. 1-2. No judgment entered against Ken for this fee/cost award. See CP 1212-1213 (judgment summary).

Sheila filed a motion for revision. CP 1231-1262. Ken filed a motion for reconsideration. CP 1263-1284. Sheila's motion was stayed pending a decision on Ken's reconsideration motion. CP 1355.

3. Commissioner Jeske's May 14, 2014, Order Following Reconsideration.

On May 14, 2014, Commissioner Jeske reconsidered her decision. CP 1344-1354. The commissioner reduced Ken's net income from $34,871.85 to $31,713.72 based on Sheila's concessions that KRES rental income had been counted twice in the initial calculation, and that the University Prep payments were less than what she stated at trial. CP 1345-1346; See also CP 1277, 1287, 1290-91, 1329 (pleadings acknowledging agreements). When ruling on Ken's request to reduce Sheila's fee award, CP 1281, Commissioner Jeske stated:

> [w]hile there is no doubt that Mr. Berry sought extensive information from multiple sources, some of his requests were not crafted in a particularly focused manner. This is not intransigence per se but it does lead to inefficiency and can inadvertently increase the cost of fees to both parties. Such conduct should not be rewarded with a full award of fees as it would only encourage less sensible advocacy and poor lawyering. Advocacy should be also be balanced with the reasonable potential for increased benefit to a client. The limited duration of remaining support for the children herein should be balanced with the amount expended by

either party in fees in furtherance of seeking relief. The Court considered both of these factors in making the prior award of fees.

CP 1353. However, the commissioner denied Ken's request to reduce the fee award finding it was reasonable given the difficulty in determining Ken's actual income, business or personal. CP 1353-54. Commissioner Jeske ordered Berry to prepare a revised child support order at Sheila's expense. CP 1352-1354.

On May 23, 2014, both parties timely sought to revise of all of Commissioner Jeske's orders. See CP 1231-1262 (Kohls' initial motion for revision); CP 1355-1359 (Kaplan) and CP 1360-1368 (Kohls' second motion for revision). At the time the parties' filed their competing motions for revision, Commissioner Jeske had not yet entered the new child support order following her decision on reconsideration.

4. Commissioner Jeske's June 17, 2014, Final Order Of Support Following Reconsideration.

Berry ignored the commissioner's order and Berry prepared an order that reduced Sheila's net income by $557.00 per month for retirement deductions that had never previously been requested and added in other items that were completely inconsistent with the commissioner's prior orders. CP 1371-1386 (proposed orders). Because of Berry's refusal to follow Commissioner Jeske's order, the parties had to appear for a second presentation hearing on June 17, 2014. Ken filed a motion for CR

11 sanctions based on Berry's conduct. CP 1387-1484. The commissioner granted Ken's motion for CR 11 sanctions an entered a judgment for $500.00 against Mr. Berry and Sheila jointly and severally. CP 1489-1490.

In the Final Order of Child Support Following Reconsideration, Commissioner Jeske and set Ken's monthly child support at $1,700.34. CP 1491-1504. The commissioner entered an additional $500.00 judgment against Sheila for "CR 11 on presentation." CP 1491. The commissioner's unchallenged finding states:

> [o]n presentation, revisions were prepared by Mr. Berry III after a second presentation and court ruling. This exceeded the scope of presentation on a very disputed trial and increased cost to Mr. Kaplan's attorney. Court grants CR 11.

CP 1498. Paragraph 3.23 of the final order awarded Sheila attorney fees and costs of $34,860.31 based on her need and Ken's ability to pay, but no judgment entered for this amount. CP 1491-92, 1499.

5. Judge O'Donnell's September 19, 2014, Order On Revision.

On August 8, 2014, Judge O'Donnell heard oral argument on the competing revision motions. By that time, nearly every issue in the trial by affidavit and the new issues raised in the subsequent hearings (i.e. retirement deductions for Sheila and CR 11 sanctions) were contested. See 8/8/14 RP 19-20; CP 1505-1546 (Sheila's supplemental motion for

revision); CP 1547-1548 (Ken's second motion for revision); CP 1572-1608 (Ken's response to Sheila's motions for revisions); CP 1609-1613 (Sheila's motion to strike Ken's response – withdrawn); CP 1614-1643 (Sheila's memorandum in strict reply). Following argument, Judge O'Donnell took the matter under advisement. 8/8/14 RP 45.

Between oral argument and Judge O'Donnell's decision, two relevant orders entered. First, following the revision hearing, Berry filed a "post-hearing memorandum regarding revision" essentially re-arguing Sheila's position. CP 1659-1674. On September 4, 2014, Judge O'Donnell granted Ken's motion to strike Sheila's memorandum, finding "the Post-Trial Memorandum is late-filed and not permitted by any court rule or statutory authority." CP 1684 (unchallenged finding). Judge O'Donnell entered a judgment against Sheila and Berry jointly and severally in the amount of $1,910.00 ($500.00 in CR 11 sanctions and $1,410.00 in attorney fees). CP 1683, CP 1691-92. Second, on September 16, 2014, the parties entered an agreed order regarding payment of post-secondary expenses for Zachary and Idalia. In that order, Ken agreed to pay for 100% of any post-secondary expenses incurred by Zachary and Idalia that were not covered by an educational trust previously established by Ken and his parents to pay for those expenses. Resp. CP ___ (Superior Ct. File

Sub. No. 669) (Agreed Order); see also 1/12/15 RP 15; CP 1814 (Sheila's proposed final child support order).

On September 19, 2014, Judge O'Donnell issued his written Order on Revision. CP 1693-1702. To summarize, Judge O'Donnell granted Ken's motion for revision and held that Sheila had not established a substantial change in circumstances to warrant a full modification. Instead, Judge O'Donnell treated Sheila's petition as a motion for adjustment. Judge O'Donnell made extensive findings to support this decision; most of which are not specifically challenged on appeal. CP 1693-1698; See Appellant's Brief, p. 1. Judge O'Donnell adopted the commissioner's findings regarding Ken's gross income of $32,129.72, revised the commissioner's findings regarding Sheila's income and reduced it by her retirement contributions, and adopted the commissioner's findings regarding attorney's fees and costs awarded to Sheila and the findings regarding the sanctions imposed against her and Mr. Berry. In all other aspects, the trial court denied Ken and Sheila's respective motions to revise the commissioner's ruling. Judge O'Donnell ordered Ken's attorney to prepare final orders. CP 1701-1702.

6. Judge O'Donnell's November 21, 2014, Order Granting Motion for Reconsideration/Clarification.

On September 29, 2014, Sheila filed a motion for reconsideration and/or clarification re-arguing her position and, in particular, asking for additional fee assistance. CP 1722-1754. On October 21, 2014, Sheila filed a revised motion duplicating the majority of the arguments in her September motion. CP 1755–1772. On November 21, 2014, Judge O'Donnell granted Sheila's motion for clarification, and clarified that Ken's net imputed income for purposes of child support was $31,713.72. Judge O'Donnell also reconsidered his decision and increased the amount of attorney's fees Ken had to pay Sheila by $8,750.00, for a total of $38,250.00. CP 1796-1800. Judge O'Donnell, reviewed his earlier order adopting Commissioner Jeske's "ruling and analysis with respect to attorneys' fees and costs," CP 1702, and made the following detailed findings regarding Berry's fees:

> Counsel's fee declarations include billing entries covering a year's worth of work on this case – much of it involving detailed financial analysis. This Court noted that from a period beginning July 2013 until the November 2013 initial hearing, counsel spent roughly the following time:
>
> 27 hours for document review
> 22 hours for deposition preparation and attendance
> 62 hours for legal research and briefing.
>
> Subsequent to the hearing, roughly 15 more hours were spent on legal research (for a motion for reconsideration) – bringing a rough

> total of nearly $27,000.00 (approx. 80 hours of work) for research and briefing. In his August 7, 2014, strict reply memorandum (page 17 of a 30 page brief), counsel asserted the proceedings 'should have been inexpensive' but the reason for the heightened costs were due to Kaplan's failure to provide discovery. But the time counsel spent on research and briefing is disproportionate to the time he spent on reviewing documents (his argument on high costs). The commissioner's award was appropriate for this period.
>
> From July through August [2014] counsel spent roughly an additional 18 hours conducting legal research and briefing on his motion for revision. Subsequent to this Court's order of 9/18/14, counsel spent roughly an additional 14 hours on his motion for reconsideration, again for legal research and briefing.
>
> The issues, however, remained essentially the same. Ms. Kohls does have need for assistance with her attorney fees and Mr. Kaplan has the ability to pay. The Court did not address Mr. Berry's request in its Sept 2014 order.
>
> Accordingly, Ms. Kohls is awarded an additional $8,750.00 in attorney fees, the Court finding that *a 25 hour investment of attorney time is reasonable given the fact that much of the research and briefing had previously been conducted.*

CP 1799-1800 (only *italicized portion* challenged on appeal). Ken noted a presentation hearing for December 29, 2014. Judge O'Donnell scheduled a hearing for January 12, 2015. See CP 3387.

7. Judge O'Donnell's January 20, 2015, Adjusted Order Of Child Support On Revision.

On January 8, 2015, Sheila filed her own notice of presentation with her own proposed orders. CP 1801-1821. She also filed an objection to Ken's proposed orders. CP 1822-1826. Ken filed a response along with another motion for CR 11 sanctions. CP 3386-3414. Sheila filed a strict

reply to Ken's response. CP 1827-1833. Following the presentation hearing on January 12, 2015, Ken submitted revised orders to Judge O'Donnell as requested. See 1/12/15 RP 25-27. Sheila again filed an objection. CP 1834-1838.

On January 20, 2015, Judge O'Donnell entered the final Adjusted Order of Child Support on Revision. The order states:

> The court finds that the Respondent's Petition for Modification of Child Support should be denied and that this matter should instead be considered as a motion for adjustment. The motion for adjustment is granted because it has been more than 24 months since the last Order of Child Support was entered or since the last incremental change went into effect, whichever is later, and there has been a change in the incomes of the parties.

CP 1855 (unchallenged finding). Judge O'Donnell also stated

> [b]ecause this Court has considered this petition as a motion for adjustment rather than modification, the Court will not order reimbursement for residential time Zachary spent with [Sheila] in 2014 (or prospectively). On May 23, 2014, [Ken] sought revision of commissioner Jeske's ruling 'in their entirety' which would include a request for back/past due medical expenses. This Court is not ordering those expenses as part of this order; other relief may be available to the parties.

CP 1856 (unchallenged finding).

Judge O'Donnell imputed Ken's net income at $31,713.72 and set Sheila's at $1,812.53. CP 1841-1842. Judge O'Donnell set Ken's child support for Idalia at $1,352.00 per month, deviating downward from the

standard calculation of $1,738.05. Judge O'Donnell made the following finding regarding the deviation:

> Per the Order of Child Support entered herein on December 17, 2010, the father was required to pay 100% of both children's tuition at University Prep and accordingly was granted a 22.2% downward deviation from the standard transfer payment. (The standard calculation of $1,928 for two children was reduced to $1,500, a difference of $428 or 22.2%). As the law of the case, this 22.2% downward deviation is required to be applied to the present standard calculation of $1,738.05 for one child. The present child support transfer payment should therefore be $1,352. ($1738.05 x 22.2% = $386; $1,738 minus $386 = $1,352).
>
> *A transfer payment of $1,352 per month, along with a payment of 100% of the child's private school tuition, provides for the child's needs.*
>
> The father is ordered to pay the full school tuition for the child. This provision may be reviewed if tuition increases by $1,250 or more over the 2010 tuition of $26,000 per child.

CP 1843 (only *italicized portion* challenged on appeal). The child support order was effective June 1, 2013. CP 1843, 1848. The order also required Ken to pay 94.6% of Idalia's extracurricular activities, educational expenses other than school tuition, and uninsured medical expenses. CP 1844-45, 1848.

Regarding fees, the final order contained a judgment against Ken in favor of Sheila for attorney fees and costs of $43,610.31. CP 1840. The order indicated that the judgment amount would bear interest at 12%. The order did not allow for prejudgment interest on the amount of the

commissioner's original fee/cost award despite the fact Sheila requested it in her pleadings. See CP 1840, 1849 (order); CP 1822, 1834-1835 (Sheila's objections to Ken's proposed orders). The final order also contained a judgment against Sheila and Berry in favor of Ken in the amount of $1,000.00 for CR 11 sanctions previously entered by Commissioner Jeske with the specific provision that interest began to run on that judgment amount on June 16, 2014. CP 1839-1840. Judge O'Donnell ordered that these judgments could be offset against each other. CP 1849. Sheila timely appealed this final order. Ken did not appeal.

8. Judge O'Donnell's April 15, 2015, Order Granting Motion to Strike Partial Satisfaction Of Judgment.

Ken paid Sheila $43,954.46 for fees and costs by February 19, 2015, and requested a full satisfaction of judgment. Ken calculated interest on the original amount of the fees/costs award from January 20, 2015, the date the judgment entered. CP 3420, 3424, 3443-3445. Sheila accepted Ken's payment, but filed her own partial satisfaction of judgment because she disagreed with Ken's calculation regarding accrued interest. Sheila calculated interest on $29,500.00 in attorney fees and $5,360.61 in costs from January 8, 2014, the date Commissioner Jeske made her initial ruling awarding these amounts, and interest on the additional $8,750.00 Judge O'Donnell awarded her from November 21, 2104, the date Judge

O'Donnell entered his order clarifying/reconsidering his decision on revision. CP 3422, 3442, 3455-3457. Despite the fact Judge O'Donnell's final order did not award prejudgment interest, Berry personally attested as follows in the partial satisfaction of judgment:

> ...C. Nelson Berry III, attorney for judgment creditor, Sheila Kohls-Kaplan, hereby acknowledged receipt of partial payment of the judgment recovered against said Petitioner in the Order on Modification of Child Support entered on January 15, 2014, and in the Order Granting Respondent's Motion for Clarification entered on November 21, 2014, the principal amounts of which are re-incorporated in the Adjusted Order of Child Support on Revision entered on January 20, 2015.
>
> The principal judgment amounts total $48,384.69 (39,387.01 from the judgment entered on January 15, 2014, plus $8,997.68 from the judgment entered on November 21, 2014), together with interest at 12% per annum. A previous payment of $42,000.00 was received on February 13, 2015; leaving balance of $6,384.69, which continued to bear interest at a rate of 12% per annum from February 13, 2015 ($2.10/day). A payment of $1,954.47 was received by judgment creditor on February 19, 2015. Applied to $12.60 in interest ($2.10 x 6 days) then to principal of $6,384.69, the principal balance remaining is $4,442.82, which continues to bear interest at the rate of 12% per annum. The Clerk of the Court is directed to enter a Partial Satisfaction of Judgment.

Resp. CP ___ (Superior Ct. File Sub. No. 702) (Partial Satisfaction).

Having a full satisfaction of judgment was important to Ken for business reasons. CP 3448-3449. Ken filed a motion to strike the partial satisfaction of judgment and asked the court to order Sheila to execute and file the full satisfaction of judgment Ken previously provided. Ken also requested attorney fees and CR 11 sanctions based on the incorrect facts

Berry attested to in the partial satisfaction of judgment. CP 3434-3438, 3439-3449, 3468-3469.

On April 15, 2015, Judge O'Donnell granted Ken's motion and ordered Sheila to execute the full satisfaction Ken provided to her within seven (7) days. The partial satisfaction of judgement was stricken. Without stating any reason, Judge O'Donnell ordered both parties to bear their own attorney fees and denied both parties' request for CR 11 sanctions. CP 3470-3473. Sheila timely appealed this order. Ken timely cross-appealed.

V. ARGUMENT.

A. STANDARD OF REVIEW.

An appellate court reviews child support modifications for abuse of discretion. In re Marriage of Fiorito, 112 Wn. App. 657, 663, 50 P.3d 298 (2002). A court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or reasons. Id. at 663-64.

> A 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.

In re Marriage of Littlefield, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997). Once the superior court makes a decision on a motion for revision, any

further appeal is from the superior court's decision, not the commissioner's ruling. State v. Ramer, 151 Wn.2d 106, 113, 86 P.3d 132 (2004).

B. THE TRIAL COURT PROPERLY DENIED SHIELA'S PEITION FOR MODIFICATION AND INSTEAD TREATED IT AS A MOTION FOR ADJUSTMENT.

There are two ways to modify an existing order of child support; a petition for modification or a motion for adjustment. In re Marriage of Morris, 176 Wn. App. 893, 901, 309 P.3d 767 (2013). A party can petition for a modification at any time based upon a substantial change in circumstances. RCW 26.09.170(1), (5). A party can also petition for a modification if the prior order is at least one year old and the order "in practice works a severe economic hardship on either party or the child" without showing any substantial change in circumstances. RCW 26.09.170(6)(a). A full modification action is "significant in nature and anticipates making substantial changes and/or additions to the original order of support." Morris, 176 Wn. App. 901 (quoting In re Marriage of Scanlon, 109 Wn. App. 167, 173, 34 P.3d 877 (2001), review denied, 147 Wn.2d 1026, 63 P.3d 899 (2002)).

A party can adjust a child support order without a showing of a substantial change in circumstances every two years based upon a change in the parents' incomes. RCW 26.09.170(7)(a). An adjustment, as opposed to a modification, "is a streamlined process that is commenced by filing a

motion for a hearing and is used to conform the existing provisions of a child support order to the parties' current circumstances." Morris, 176 Wn. App at 901. The King County Local Rules permit a trial court to grant an adjustment in a child support modification proceeding if the requirements for an adjustment are met but the requirements for a modification are not. King County Local Family Law Rule (KCLFLR) 14(a)(4).

Here, Sheila argues the trial court abused its discretion by denying her petition for modification. CP 1698. First, Sheila argues the trial court erroneously concluded she failed to establish that a substantial change in circumstances had occurred since the entry of the 2010 child support order. Second, she argues the trial court erroneously determined the 2010 order did not work a severe economic hardship on her. See Appellant's Brief, p. 16-20. Both arguments fail.

1. The Trial Court Did Not Abuse Its Discretion When It Decided The Changes In The Parties' Incomes Between 2010 and 2014 Did Not Create A Substantial Change In Circumstances Warranting A Modification Of Support.

The determination of whether a substantial change of circumstances has occurred which justifies a modification of child support is within the discretion of the trial court and will not be reversed on appeal absent abuse of discretion. Lambert v. Lambert, 66 Wn.2d 503, 508, 403

P.2d 664 (1965); In re Marriage of Shellenberger, 80 Wn. App. 71, 80, 906 P.2d 968 (1995), In re Marriage of Arvey, 77 Wn. App. 817, 820-21, 894 P.2d 1346 (1995).

The trial court clearly had the correct legal standard in mind when analyzing whether a substantial change in circumstances had occurred since the 2010 child support order. The court stated:

> 'Substantial' as an adjective means something worthwhile as distinguished from something without value, or merely nominal. In re Krause's Estate, 173 Wn. 1, 8, 21 P.2d 270 (1933). Generally speaking, the mere passage of time does not constitute a significant change in circumstances. Nor, for that matter, does a routine change in a parent's income. See, e.g., In re Marriage of Scanlon & Wintrak, 109 Wn. App. 167, 34 P.3d 877 (2001) [review denied, 147 Wn.2d 1026, 63 P.3d 899 (2002)].

CP 1693-94. The trial court considered all of the reasons Sheila noted in her petition for modification and rejected three of them as "legally insufficient" to support a modification. Sheila does not assign error to these findings. See CP 1694-95 (Zachary's graduation and the reduction in private school expenses, Ken's failure to pay pro rata share of medical expenses). Unchallenged findings are verities on appeal. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 808, 828 P.2d 549 (1992).

Sheila assigns error to only the following finding:

> the disparity between Kaplan's and Kohls' earnings has remained constant and was predicted to do so at the time the 2010 order was entered.

CP 1698; Appellant's Brief, p. 16-18. Findings of fact will be upheld if they are supported by substantial evidence. Shellenberger, 80 Wn. App. at 80-81; In re Marriage of Stern, 68 Wn. App. 922, 929, 846 P.2d 1387 (1993). Substantial evidence exists if the record contains evidence of a sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. In re Marriage of Griswold, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002), review denied, 148 Wn.2d 1023 (2003).

Sheila's sole argument is that the "near quadrupling" of Ken's defeats the trial court's finding because "whether a change in circumstances is substantial depends on its effect on a parent's monthly net income." Sheila cites In re Marriage of Bucklin, 70 Wn. App. 837, 840, 855 P.2d 1197 (1993), to support her argument. In Bucklin, the father sought to reduce his child support obligation claiming his income had substantially changed. Id. at 838-39. The appellate court (Div. III) preliminarily noted:

> [t]he [child support] schedule bases the child support obligation on the combined monthly net incomes of both parents. RCW 26.19.011. It allocates each parent's burden according to his or her share of the combined monthly net income. RCW 26.19.080. Thus, whether a change in circumstances is substantial depends on its effect on a parent's monthly net income. Monthly net income,

> in turn, can only be determined in relation to monthly gross income. RCW 26.19.071(5).

Bucklin, 70 Wn. App. at 840. The appellate court reversed the trial court's decision to reduce the father's child support because

> [d]espite explicitly finding that it had neither the statutorily mandated verification of Mr. Bucklin's income, nor adequate independent records to determine it, the court exercised its discretion in an untenable and manifestly unreasonable way by essentially guessing at his income. Without any clear idea of Mr. Bucklin's gross income, there was no way to determine whether his circumstances had substantially changed.

Id. at 841. Bucklin simply doesn't apply in this case. Here, the trial court had significant evidence from which to make findings regarding Ken's income. Although Sheila does not agree with the trial court's ultimate finding, the trial court did not guess.

Only changes in income that were not contemplated at the time a prior order was entered will constitute a substantial change in circumstances allowing for a modification. Scanlon, 109 Wn. App. at 173-74. In this case, the prior child support orders and worksheets demonstrate Ken's and Sheila's incomes have historically been disparate. At the time of their divorce in 2005, the child support worksheets show Ken's gross income was $29,370.00, and Sheila's was zero. CP 8[1]. In the 2010 worksheets, Ken's gross income was $21,799.00, and Sheila's was

[1] Sheila had no actual income. The worksheets show only $9,000.00 per month in spousal maintenance.

$3,615.00. CP 201. By 2014, the trial court found Ken's gross income was $32,129.72, and Sheila's was $2,991.17. CP 1701, 1850. There is nothing new in the fact that Ken earns significantly more money than Sheila.

The increase in Ken's income between 2010 and 2014 was the result of his decision to completely stop practicing law in 2009 and work full-time managing KRES. CP 572-73. Sheila knew Ken was doing this in 2010 because Ken felt he could earn more income at KRES, and she presented this same information at the trial by affidavit in 2013. See CP 269-171, 337 (Kaplan's decline in income between 2005 and 2009 because he no longer practicing law and decline in real estate market). Sheila's argument on appeal that she did not contemplate an increase in Ken's income is inconsistent with her own evidence at trial.

According to the trial court's findings, by 2012, Ken's income increased to the level he was earning in 2005 at the time original child support order entered. The evidence supports the trial court's finding the disparity in the parties' income was predictable and would remain constant. Cf. Scanlon, 109 Wn. App. at 174 (appellate court gives guidance on remand by noting increase of $270,000.00 per year in mother's income did not appear to be contemplated by parties at time of original decree). The trial court did not abuse its discretion.

2. The Trial Court Applied The Correct Legal Standard When It Determined Sheila Did Not Demonstrate The Current Child Support Order Worked A Severe Economic Hardship Warranting A Modification Of Child Support.

Sheila summarily argues the trial court abused its discretion because it had an "erroneous view of the law" when it determined she did not demonstrate the 2010 child support order worked a severe economic hardship on her. Appellant's brief, p. 19. It is difficult to discern exactly what Sheila means by this argument because it is clear the trial court considered the appropriate legal test. The trial court stated:

> [o]ur Courts have addressed instances of "severe economic hardship" but it is a safe observation to note that there is no formal legal test applicable because none could adequately encompass the wide range of factual situations that might arise. It is similarly safe to note that 'it is difficult to imagine many cases in which a prior order constitutes a severe economic hardship to either of the parties or the child without there having occurred a change of circumstances.' 20 Wash. Prac., Fam and Community Prop. L. § 38.21. The burden on proving the hardship rests with the party asserting it.

CP 1697.

Further, Sheila ignores the fact the trial court also found that Sheila provided limited information to support her claim of severe economic hardship, that her financial declarations in 2010 and 2014 contradicted her claim that increased residential time with Idalia increased her expenses, and that an inability for Idalia to participate in voice lessons and summer camps did not demonstrate a severe economic hardship. CP 1696-97.

These findings are verities on appeal. See Cowiche Canyon Conservancy, 118 Wn.2d at 808. The trial court considered the correct legal standard and its findings support its decision.

C. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT IMPUTED KEN'S INCOME AT $31,713.72 FOR PURPOSES OF CHILD SUPPORT.

The trial court adopted the commissioner's calculation and found Ken's net income was $31,713.72 per month. CP 1841; see also CP 1701. By doing so, the commissioner's explicit findings became those of the trial court. In re Dependency of B.S.S., 56 Wn. App. 169, 170-71, 782 P.2d 1100 (1989). Separate findings and conclusions by the trial court were not required. Id. at 171.

Although Sheila does not assign error to the trial court's findings, she argues that the trial court abused its discretion when calculating Ken's income because it allowed deductions for depreciation ($10,397.00) and insurance ($7,999.00). Appellant's Brief, pp. 12-16. Sheila presents these arguments in a way that is extremely misleading. She implies the trial court erroneously reduced Ken's monthly income by $18,396.00 ($10,397.00 + $7,999.00). This is not what occurred; the trial court's decision regarding these expenses reduced Ken's income by $1,298.59 per month ($866.42 for depreciation and $432.17 for insurance).

The trial court accepted Sheila's argument that depreciation expenses attributed to both Ken's home rental and KRES rentals had to be added back to the rental income shown on line 17 of Ken's 2012 tax return. CP 283-285, CP 2154 (tax return); Cf. CP 668 (Ken's argument). Sheila argued the total depreciation expense in 2012 was $142,299.69, or $11,858.31 per month. CP 283-285, 861-862, 1288-89; See also CP 1075, 1283-1284, 1596-1598 (Sheila's illustrative chart presented at trial by affidavit). In response, Ken submitted a declaration from his CPA, Marianne Pangallo, that KRES incurred actual expenses of $10,397.00 ($866.42 per month) for equipment and furniture and $68,671.00 ($5,697.58 per month) for principal mortgage payments in 2012. Ms. Pangallo opined these expenses should be deducted from the KRES rental income because they were actually incurred and reduced Ken's income from KRES, unlike depreciation or mortgage interest expense. CP 798-799, 804, 1277-1278, 1331-1333.

The trial court did not accept Pangallo's evidence entirely. Instead, the trial court stated:

> [t]he Court denies...to alter the depreciation figures and credit as to the credit related to loan payments. ... However, the Court will grant the request as to the depreciation related to equipment and furnishings ($10,397). While the evidence is less than specific as to this disputed deduction resulting in an out of pocket loss, there is sufficient evidence in the record that this smaller amount relates

> to an actual expenditures (sic) associated with Mr. Kaplan's interests in the LLC's. (see Pangallo declaration and Exhibit A).

CP 1345. Based on this decision, the commissioner added back depreciation in the amount of $10,991.89 per month to increase Ken's rental income. CP 1345-1346. This figure is $866.42 less than the $11,858.31 per month Sheila originally proposed.

In her written motion for revision, Sheila acknowledged "the monthly depreciation expenses of $10,991.89 were properly added back to [Ken's] net income." CP 1617; see also CP 1380 (Sheila's illustrative chart attached to her proposed order following commissioner's reconsideration). Sheila changed her mind by the time of argument on revision and now on appeal. See 8/8/14 RP. To the extent Sheila agreed $10,991.89 was the correct depreciation expense, she invited any error in the calculation. See In re Dependency of K.R., 128 Wn.2d 129, 147, 904 P.2d 1132 (1995) (counsel cannot set up an error at trial and then complain of it on appeal).

Sheila's remaining argument that the trial court abused its discretion by accepting Ms. Pangallo's declaration as sufficient evidence demonstrates a profound misunderstanding of the appellate court's role on appeal. See Appellant's brief, p. 13. An appellate court does not reweigh the evidence. In re Marriage of Rich, 80 Wn. App. 252, 259, 907 P.2d

1234 (1996). Ken did not have to provide receipts or other "documentary evidence" in order for the court to accept Ms. Pangallo's declarative testimony. The declaration itself, coupled with the tax returns, was sufficient. Cf. In re Marriage of Gainey, 83 Wn. App. 269, 948 P.2d 865 (1997) (husband did not produce *any* evidence business expenses); Bucklin, 70 Wn. App. 837 (husband did not provide income tax returns or paystubs).

Sheila's argument regarding the trial court's insurance deduction is similarly flawed. First, again her argument is misleading. Sheila did not ask the court to add back $7,999.00 for KRES insurance as shown line 15 of Schedule C of Ken's 2012 tax return. She only asked the court to add back $5,186.00 for key man and professional liability insurance. Compare Appellant's brief, p. 14-15 with 11/22/13 RP 9-10 (Berry specifically acknowledges $2,183.00 in general liability expense is appropriate), CP 1075 (illustrative chart at trial); CP 1361 (Sheila's motion for revision); CP 1768 (Sheila's proposed order on revision). This would result in an increase in Ken's income of $432.17 per month, not the $666.58 per month she requests in her brief. Second, like her argument regarding depreciation, Sheila asks this Court to reweigh the evidence and reject Ms. Pangallo's declaration in favor of Sheila's declaration. This Court should

decline to do so. There is substantial evidence to support the trial court's decision to impute Ken's income at $31,713.32.

D. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY REFUSING TO SET KEN'S CHILD SUPPORT IN EXCESS OF THE STANDARD CALCULATION SOLELY BECAUSE OF KEN'S WEALTH.

When entering an order of child support, the trial court begins by setting the basic child support obligation. State ex rel. M.M.G. v. Graham, 159 Wn.2d 623, 627, 152 P.3d 1005 (2007). Basic child support is determined by the economic table in RCW 26.19.020, using the parents' combined monthly net income and the number and age of the children. RCW 26.19.011(1). When the parents' monthly net income exceeds $12,000, the economic table is advisory and the court may exceed the presumptive amount of support on written findings of fact. RCW 26.19.020. In this case, Sheila argues the court abused its discretion by "refusing to even address her request" to set Ken's support above the advisory level. Appellant's brief, p. 20-21. This argument fails. The trial court did not refuse to address Sheila's request, it simply rejected it.

First, Sheila did not make this request in either her trial brief or in her response to Ken's trial brief. CP 268-426, CP 851-975. When she raised the issue for the first time during argument at trial, Sheila summarily asked the court to "extrapolate" when setting Ken's support

because of his wealth. 11/22/13 RP 16. This relief is simply not available. In 2007, the Washington Supreme Court stated:

> [i]f the trial court determines the basic child support obligation simply by mechanically extending the economic table, the resulting award may not have any realistic correlation to the child's or children's needs, or the parents' income, resources, or standard of living. We conclude, therefore, that the trial court may not use extrapolation when it exceeds the economic table in the child support schedule.

In re Marriage of McCausland, 159 Wn.2d 607, 617, 152 P.3d 1013 (2007).

Second, Sheila's arguments focus exclusively on the disparity between her income and Ken's as the basis for setting support in excess of the standard calculation. At trial, Sheila acknowledged Idalia's needs were met by the standard calculation, but she simply wanted more. CP 1361, 1733-1737[2]. On appeal, Sheila cites to this Court's decision in Scanlon to support her argument that the "great disparity" between her income and Ken's, without anything further, justifies child support in excess of the standard calculation. However, in her brief, Sheila omits the last critical sentence of this Court's decision in Scanlon. This Court stated:

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[2] In a supplemental trial memorandum, and two post hearing memorandums on revision, all stricken as untimely, Sheila offers the same argument she offers to the superior court and this Court on appeal and proposes orders setting Ken's child support obligation at $3,149.17 per month. CP 990-993, 999-1012, 1650-1653, 1665-1668.

> [g]enerally, when an obligor parent is ordered to pay an amount of support that exceeds the economic table, that parent enjoys substantial wealth in contrast to the obligee parent who lives in comparatively modest circumstances. In those cases, it is appropriate for a court, in considering the standards of living of both parents, to attempt to lessen the disparity between the standard of living of the child and the wealthy parent. *But it contravenes legislative intent to increase the child support obligation of an obligor parent of moderate means simply because the obligee parent is affluent.*

Scanlon, 109 Wn. App. 179-180 (italics added); Appellant's brief, p. 21. Sheila knows that wealth alone is not enough to justify increasing child support above the economic table – there has to be some link between the additional support and the child's needs.

In this case, the trial court appropriately exercised its discretion and refused to set support above the economic table. Instead, it ordered Ken to pay 100% of Idalia's private school tuition. CP 1215, CP 1702, CP 1843. In the final support order, the trial court stated:

> [a] transfer payment of $1,352 per month, along with a payment of 100% of the child's private school tuition is sufficient to meet the child's needs.

CP 1843. Although Sheila assigns error to this finding, she has waived the assignment by failing to provide any argument or citations to the record in support of her assignment. RAP 10.3(a)(5)-(6). Indeed, there is no evidence to support such an argument. The first and only time Sheila

discusses Idalia's needs is in her response declaration at trial. In that declaration, Sheila summarily stated the 2010 child support order

> is cheating our daughter out of the opportunities she would have otherwise enjoyed, and can still enjoy, including the opportunity to take the guitar and voice lessons she so desires and to participate in Ski Bus Trips at her school and attend Summer camps as she once did.

CP 858. However, Sheila provided no information or argument regarding the cost of these items or how Ken's increased child support still failed to meet these needs. Her arguments primarily centered on Ken's wealth. 11/22/13 RP 16; 8/8/14 RP 15-17.

Ultimately, Sheila's child support increased from $750.00 per month to $1,352.00 per month (approximately 45%). There is nothing in the record to demonstrate this increase is insufficient to meet Idalia's needs. The trial court recognized that Idalia lived in a million dollar home and went to a great school. 8/8/2014 RP 16. The trial court did not abuse its discretion, and this Court cannot "substitute its own judgment for that of the trial court where the record shows that the trial court considered all relevant factors and the award is not unreasonable under the circumstances." Fiorito, 112 Wn. App. at 664.

E. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY CONTINUING TO APPLY THE DOWNWARD DEVIATION ADOPTED IN THE 2010 ORDER OF CHILD SUPPORT BECAUSE KEN WAS STILL PAYING 100% OF IDALIA'S PRIVATE SCHOOL TUITION.

Sheila next argues the trial court abused its discretion when it granted Ken a downward deviation in his support obligation because he was paying 100% of Idalia's private school tuition. Sheila argues the trial court erroneously applied the "law of the case" doctrine and determined it was bound by the 2010 trial court's decision to grant the downward deviation. See Appellant's brief, p. 24-25; CP 1843. Without any citation to authority, Sheila claims the "law of the case" doctrine only applies to appellate rulings enunciating a principal of law. Sheila is incorrect.

In In re Marriage of Trichak, 72 Wn. App. 21, 22, 863 P.2d 585 (1993), neither party appealed the decree of dissolution that offset the father's child support obligation by the amount of social security benefits received by the parties' developmentally disabled child. This Court held

> [w]hile continuing jurisdiction in child custody and support matters is necessary to ensure that all matters affecting the needs of children are addressed, it is not the proper forum for relitigating previously decided legal issues that are unrelated to such needs.

Trichak, 72 Wn. App. at 24. Therefore, the mother was barred from re-litigating the propriety of the offset because she did not challenge the 1989 decree when it was entered. Id.

The same result is required here. In the 2010 child support order, the trial court granted Ken a 22.2% downward deviation because he was paying 100% of the children's private school tuition. Sheila did not appeal the 2010 child support order. The factual basis for the deviation was established in the prior litigation. The factual basis remained the same in 2013 when Sheila filed her petition. The trial court did not abuse its discretion when it applied the same downward deviation when it adjusted Ken's support. See also Trichak, 72 Wn. App. at 23-24 (court does not have authority to modify prior court's deviation decision in an adjustment proceeding).

F. THE TRIAL COURT APPROPRIATELY DECLINED TO MODIFY PROVISIONS FOR POST-SECONDARY AND HEALTH CARE PREMIUMS BECAUSE THIS RELIEF IS NOT AVAILABLE IN A MOTION TO ADJUST CHILD SUPPORT.

The 2005 and 2010 orders for support state:

> the parents shall pay for the post[-]secondary educational support of the children. Post[-]secondary support provisions will be decided by agreement or by the court.

CP 5, CP 195. In her petition for modification, Sheila requested "child support payments" for Zachary and Idalia for the summer months of June, July and August, while they were in college. CP 213-214. Sheila argues the trial court abused its discretion by failing to order this "post-secondary" support for Zachary and Idalia. Appellant's brief, p. 28-30.

A trial court's decision regarding post-secondary support is reviewed for an abuse of discretion. Morris, 176 Wn. App. at 905. A petition for modification is required to establish post-secondary obligations; a parent cannot seek post-secondary support through a child support adjustment. Id. at 902; In re Marriage of Sprute, 86 Wn. App. 342, 349, 344 P.3d 730 (2015). Because the trial court treated Sheila's petition for modification as a motion for adjustment, it did not order post-secondary support. CP 1856. Instead, it appropriately ordered:

> [t]he provisions of the Order of Child Support dated 2/15/05 shall remain in full force and effect except as modified by the Agreed Order re Post-Secondary Educational Expenses entered on 9/12/14.

CP 1844. The trial court did not abuse its discretion.

In Morris, this Court concluded the mother's error in filing a motion for adjustment rather than a petition for modification did not preclude the court from addressing post-secondary support because the father failed to identify how he was prejudiced. Morris, 156 Wn. App. at 904. Applying this type of harmless error analysis in this case, still does not lead to reversal.

First, the only argument Sheila makes on appeal is that the revision court lacked the authority to revise the commissioner's order under RCW 2.24.050 and KCLCR 7(b)(8)(A) because Ken did not specifically identify this part of the commissioner's order as error. Appellant's brief, p. 28-29.

Ken sought revision of the commissioner's orders in "their entirety." CP 1355. Sheila sought revision of the commissioner's orders regarding post-secondary support. CP 1232, 1362, 1507. A revision court has full jurisdiction over the case and is authorized to determine its own facts based on the record that was before the commissioner. Dependency of B.S.S., 56 Wn. App. at 171. Sheila placed the issue properly before the revision court under KCLCR 7(b)(8)(A) even if Ken somehow did not.

Second, by the time of entry of the order on adjustment, Sheila and Ken had entered an agreed order requiring Ken to pay 100% of all post-secondary expenses not covered by the trust. Resp. CP ___ (Agreed Order). The revision court was clearly aware of this when it entered final orders. 1/12/15 RP 15-18. Because Ken agreed to be responsible for all post-secondary expenses, any error will not prejudice Sheila. Absent prejudice, reversal/remand is not necessary. Morris, 176 Wn. App. at 903.

Sheila also argues the trial court abused its discretion when it failed, without any reason, to order Ken to reimburse Sheila for an overpayment of health care premiums in the amount of $1,071.94. Appellant's brief, p. 25-27. Sheila's argument ignores the record. The trial court adopted the commissioner's finding that:

> [t]he mother's claim to recover for her overpayment of the premium of the health insurance for the children is denied as it is res judicata.

CP 1208; see also 11/22/13 RP 50 (commissioner also states court cannot order retroactive relief). The trial court also denied Sheila's request for reimbursement because it determined the proceeding was properly an adjustment and not a modification, specifically noting "other relief may be available." CP 1702; 1856.

Sheila does not argue either reason was erroneous or an abuse of discretion. Instead, for the first time on appeal, she argues that reimbursement is required based on equitable principals even though no statutory authority exists. Appellant's brief, p. 26; Cf. CP 303-304 (trial brief), CP 1231, 1362 (motions for revision); CP 1505-1507 (supplemental motion for revision). This court should decline to address an argument raised for the first time on appeal. RAP 2.5. The trial court did not abuse its discretion when it denied Sheila's request without prejudicing her ability to seek the same relief in an appropriate proceeding. See Morris, 176 Wn. App. at 903 (errors in civil cases are rarely grounds for relief without a showing of prejudice to the losing party).

G. SHEILA'S CLAIMED ERROR REGARDING THE UNREIMBURSED HEALTH CARE EXPENSES IS MOOT.

Sheila appeals the trial court's decision declining to order Ken to reimburse her for unpaid medical expenses. Appellant's brief, p. 27. Following the filing of her opening brief, the parties independently

reached a settlement agreement on this issue, and Ken has paid Sheila according to the terms of the settlement. The settlement agreement is attached as Appendix A. This issue is moot.

H. THE TRIAL COURT APPROPRIATELY EXERCISED ITS DISCRETION AND AWARDED SHEILA REASONABLE ATTORNEY FEES AND COSTS OF $43,610.43.

Finally, we come to the real appellate issue – Sheila's attorney fees. Trial courts are granted discretion to require one party to pay the other party's attorney fees and costs based on the needs of the party requesting fees and the ability of the other spouse to pay. RCW 26.09.140; In re Marriage of Brown, 159 Wn. App. 931, 936, 247 P.3d 466 (2011); In re Marriage of Morrow, 53, Wn. App. 579, 590, 770 P.2d 197 (1989). In dissolution cases, the party challenging the award must demonstrate that the trial court's exercise of discretion was "clearly untenable or manifestly unreasonable." In re Marriage of Knight, 75 Wn. App. 721, 729, 880 P.2d 71 (1994), review denied, 126 Wn.2d 1011, 892 P.2d 1089 (1995).

Whether labeled a modification or an adjustment of support, the attorneys' fees spent by both parties since June 2013 are astounding. Berry filed nine declarations regarding fees. CP 255-267, 976-289, 1092-1109, 1188-1205, 1324-1328, 1549-1571, 1703-1721, 1773-1774, 1794-1795. The total fees and costs identified in those declarations and accompanying billing statements was $91,328.14. Appendix B, Summary of Fees and

Costs – Sheila Kohls. Kaplan's attorney, Janet Comin, filed four declarations regarding fees. CP 650-659, 846-850, 1159-1171, 1685-1690. The total fees and costs identified in those declarations and accompanying billing statements was $48,093.42. Appendix C, Summary of Fees and Costs – Ken Kaplan.

Sheila does not assign error to the trial court's extensive finding on this issue. Compare Appellant's brief, pp. 1-2 (16 assignments of error) with CP 1799. Instead she assigns error to a single finding that 25 hours of attorney time was reasonable. Appellant's brief, p. 2. Sheila ignores the other relevant findings surrounding Berry's inefficient discovery methods, or the finding that the "amount of fees expended on litigation by both parties is excessive in light of the realistic or plausible benefit to be gained." CP 1352. Unchallenged findings are verities on appeal. Cowiche Canyon Conservancy, 118 Wn.2d at 808. As verities, the trial court's findings are binding on this Court, and the only inquiry on appeal is whether the trial court abused its discretion by entering its final order based on the unchallenged findings. Moreman v. Butcher, 126 Wn.2d 36, 39-40, 891 P.2d 725 (1995).

The trial court did not abuse its discretion when it awarded Sheila $43,610.31 in attorney fees and costs. CP 1840. The factual and legal questions were not unduly complex. The central question was what was

Ken's monthly income for purposes of child support? It was essentially a math problem. The fact there were a number of documents Sheila felt she had to review to solve the math problem doesn't make the math itself complicated. Unlike the cases Sheila cites in her brief, this was not a dissolution trial where one spouse had to identify and unravel numerous business transactions over a 27 year marriage to establish community interests, Friedlander v. Friedlander, 58 Wn.2d 288, 362 P.2d 352 (1961), and Ken was not intransigent when disclosing his financial information[3]. In re Marriage of Mattson, 95 Wn. App. 592, 605-606, 976 P.2d 157 (1999) (fees awarded based on intransigence).

Sheila's argument also ignores that some of her attorney fees were incurred for inappropriate pleadings that were stricken or for proposed orders that raised new issues. CP 990-1026, 11/22/13 RP 5-6 (stricken supplemental trial by affidavit brief); CP 1387-1390, 1498-90 (proposed order following trial by affidavit uses new income figure for Sheila for first time); CP 1644-1658, 1683-1684 (stricken post revision hearing memorandum); CP 3387-3388 (unnecessary cross-motion for presentation). She incurred almost $25,000.00 in fees just "conferring"

[3] Both the commissioner and the revision court rejected Sheila's argument that Ken was intransigent. CP 1207, 1702. Sheila does not challenge this finding on appeal.

with Berry between June and November 6, 2013. See CP 1118-1133 (analysis of Berry billing statements through November 6, 2013).

Sheila broadly argues that the trial court needed to "indicate at least approximately how it arrived at the final numbers, and explain why discounts were applied." Appellant's Brief, p. 41. The court did this. CP 1799-1800; Cf. Taliesen Corp. v. Razore Land Co., 135 Wn. App. 106, 146, 144 P.3d 1185 (2006) (remand because trial court made no findings to support fee award in case under Washington Model Toxic Control Act). Sheila simply doesn't like the trial court's decision and demands further explanation – ignoring the fact the sole finding she challenges on appeal is based on substantial evidence and the remaining findings are verities. This Court cannot substitute its judgment for that of the trial court. Rich, 80 Wn. App. at 259 (role of appellate court is not to reweigh the evidence).

Based upon her original trial by affidavit brief, the most Sheila hoped to gain was *$25,530.00* in increased support for Idalia between June 2013 and July 2016 (when Idalia will graduate). See CP 1114. There is only one reason that Sheila would spend $91,328.14, approximately 26% of the $350,000.00 in fees she incurred during the entirety of the prior dissolution proceedings, to gain $25,530.00 in child support. See CP 240 (Sheila's June 2013 financial declaration). Throughout the 10 year history

of this case, Sheila, and her attorneys, have continued to unreasonably litigate because they counted on receiving fees from Ken under the "need and ability to pay" standard in RCW 26.09.140. Earlier trial court decisions have demonstrated that Sheila will engage in histrionic exaggeration, that she is not credible, and that she needs to "cling to conflict." CP 665.

This case is no different. The trial court's unchallenged finding that "[a]dvocacy should be balanced with the reasonable potential for increased benefit to a client" is significant. CP 1353. Here, the trial court awarded Sheila more in attorney fees than the amount she asked for in total child support at the commencement of the case, and, more importantly, more than she actually gained at the end of the case. The trial court did not abuse its discretion by determining an award of $43,610.31 was reasonable for a child support proceeding.

I. THE TRIAL COURT APPROPRIATE EXERCISED ITS DISCRETION AND ORDERED CR 11 SANCTIONS AGAINST SHEILA AND BERRY.

In order to impose sanctions under CR 11, a trial court must find that (a) the document in question asserted a claim not grounded in fact or law and the attorney failed to make reasonable inquiry, or (b) the document was filed for an improper purpose. Biggs v. Vail, 124 Wn.2d 193, 201, 876 P.2d 448 (1994). The appellate court reviews the trial

court's imposition of CR 11 sanctions for an abuse of discretion. Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 338, 858 P.2d 1054 (1993).

In this case, the trial court entered two separate orders imposing CR 11 sanctions. It ordered $1,000.00 in CR 11 sanctions adopting Commissioner Jeske's "ruling and analysis with respect to sanctions imposed against Mr. Berry and Ms. Kaplan (sic)." CP 1702, CP 1839-1840. Sheila does not challenge the trial court's finding that

> [o]n presentation, revisions were prepared by Berry after a second presentation and court ruling. This exceeded the scope of presentation on a very disputed trial and increased cost to Mr. Kaplan's attorney. Court grants CR 11.

CP 1490. This finding is a verity on appeal. Contrary to Sheila's argument on appeal, the revisions Berry made to his proposed orders did not just change Sheila's monthly income by giving her mandatory retirement reductions. The proposed orders also contained substantive revisions that were not ordered and not argued or addressed on reconsideration. Compare Appellant's brief, p. 30, with CP 1389-1390 (including judgment for Zachary that was not ordered and changing percentage of Ken's contribution to college preparatory costs). The record supports a finding that proposed orders did not accurately reflect the commissioner's ruling and were imposed for an improper purpose. See

Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 220, 829 P.2d 1099 (1992) (remand for findings unnecessary where court imposed sanctions based on factual record consisting of affidavits).

The trial court also ordered $500.00 in CR 11 sanctions after Berry filed a 16 page "post-hearing memorandum regarding motions for revision." CP 1644-1658, 1683-1684. Once again, Sheila does not challenge the trial court's finding that KCLCR 7(b)(4) did not authorize the post-hearing memorandum and that Berry's memorandum specifically violated the local court rules. CP 1684. Instead, Sheila argues the trial court applied an erroneous view of the law because KCLCR 7(b)(8), not KCLCR 7(b)4) governs revision motions.

This argument completely ignores the plain language of each rule. KCLCR 7(b)(4) governs all civil motions and outlines the deadlines for filing motion documents, opposing documents, and reply documents. KCLCR 7(b)(8) supplements KCLCR 7(b)(4) and identifies additional requirements for scheduling hearings and providing working copies. KCLCR 7(b)(8) is completely silent about the actual motion or opposing or reply documents. The trial court considered the correct rule, and the unchallenged finding supports the court's decision to impose CR 11 sanctions of $500.00.

In the alternative, this Court can affirm the trial court's decision to award fees based on intransigence. See In re Marriage of Lukens, 16 Wn. App. 481, 487-88, 558 P.2d 279 (1976), review denied, 88 Wn.2d 1011 (1977) (appellate court can affirm trial court on any grounds established by the record). A trial court has discretion to award attorney fees when one party's intransigence causes the other party to incur unnecessary legal expenses. In re Marriage of Bobbitt, 135 Wn. App. 8, 30, 144 P.3d 306 (2006). Here, the trial court's unchallenged findings show Sheila filed proposed orders that did not conform to the court's rulings and filed pleadings that were not authorized by the rules – an award of fees based on intransigence is also appropriate under these circumstances.

J. SHEILA CANNOT OBTAIN PREJUDGMENT INTEREST FROM THE DATE OF A COMMISSIONER'S ORDER AWARDING HER ATTORNEY FEES WHEN SHE SOUGHT TO REVISE THE AMOUNT OF THE FEE AWARD.

An appellate court reviews a trial court's decision regarding prejudgment interest for abuse of discretion. Hadley v. Maxwell, 120 Wn. App. 137, 141, 84 P.3d 286 (2004). Parties in dissolution proceedings may be entitled to prejudgment interest under the general rule in Washington that prejudgment interest is permitted when an amount claimed is liquidated. In re Marriage of Rockwell, 157 Wn. App. 449, 454, 238 P.3d 1184 (2010); In re Marriage of Oliver, 43 Wash. App. 423,

427, 717 P.2d 316 (1986) (citing Prier v. Refrigeration Eng'g Co., 74 Wash. 2d 25, 32, 442 P.2d 621 (1968)). A liquidated claim is

> one where the evidence furnishes data which, if believed, makes it possible to compute the amount with exactness, without reliance on opinion or discretion.

Prier, 74 Wn.2d at 32, 442 P.2d 621 (1968). The entry of the judgment accomplishes liquidation of the amount claimed for attorney's fees. National Steel Constr. Co. v. National Union Fire Ins. Co., 14 Wn. App. 573, 577, 543 P.2d 642 (1975).

In this case, Sheila argues that interest should have commenced on Commissioner Jeske's award of attorney fees in the amount of $29,500.00 and costs in the amount of $5,360.31, from the date "that judgment" entered. Appellant's brief, p. 38. However, Commissioner Jeske never entered "that judgment." There is no judgment summary in either Commissioner Jeske's initial order of child support or the final order following reconsideration. CP 1212-1226, 1491-1504. Sheila's attorney drafted both of these orders, and did not include a judgment summary for attorney fees despite the fact he could have.

More importantly, Sheila sought to revise Commissioner Jeske's decision regarding the *amount* of the fees awarded. By seeking revision, Sheila specifically asked the trial court, sitting de novo, to exercise its discretion and award her "the full amount of her reasonable attorney fees

and costs." See CP 1362 (Motion for Revision). Additionally, during her revision argument, Sheila only asked for prejudgment interest on any back child support, not on any award of attorney fees. 8/8/14 RP 18. Until the trial court entered its judgment fixing the amount of fees, the amount was not liquidated, and no prejudgment interest could accrue.

The trial court specifically recognized the unliquidated nature of Sheila's claim when it found:

> A. ... [t]he first binding decision for attorney's fees and costs in favor of Respondent Kohls, is set forth in the *Adjusted Order of Child Support on Revision*, entered by this Court on January 20th, 2015. The amounts set forth in the judgment were $38,250 for attorney's fees and $5,360.31 for costs.
>
> B. In the January 20th, 2015, *Adjusted Order of Child Support on Revision*, at page 3, Section III, this Court specifically ordered that its Order *superseded* the *Final Order Of Child Support Following Reconsideration* entered by Commissioner Jeske on June 16, 2014.

CP 3471. These findings are verities on appeal, and support the trial court's decision. The trial court did not abuse its discretion by not awarding Sheila prejudgment interest on the award for attorney fees.

Judgments bear interest from the date they are entered. RCW 4.56.110(4). Sheila also argues that the trial court abused its discretion because it calculated the interest owed on her judgment for fees against Ken differently from the interest owed on Ken's judgment for CR 11 sanction and fees against her. Appellant's Brief, pp. 37-38. Again,

Sheila's argument ignores the actual facts of this case. The judgments in favor of Ken actually entered on June 17, 2014. CP 1489-1490, 1491; see also CP 1839-1840 (re-entered on January 20, 2015). The first judgment in favor of Sheila actually entered on January 20, 2015. CP 1840. The court calculated interest on each of these judgments from the date they actually entered. See CP 3442 (explaining interest calculation). There was no disparate treatment and no abuse of discretion.

K. THE TRIAL COURT ERRED BY NOT ORDERING ATTORNEY FEES OR CR 11 SANCTIONS AGAINST SHEILA AND BERRY FOR REFUSING TO ENTER A FULL SATISFACTION OF JUDGMENT AFTER ACCEPTING KEN'S PAYMENT FOR ATTORNEY FEES.

Although Sheila timely appealed the trial court's April 15, 2015, order granting Ken's motion to strike Sheila's partial satisfaction of judgment and to enter a full satisfaction of judgment, she provides no argument regarding this order in her opening brief. By failing to do so, she has waived her ability to assert any error on appeal. RAP 10.3.

Ken cross-appeals the trial court's decision not to award Ken attorney fees or CR 11 sanctions. The trial court summarily denied Ken's request without any reason. CP 3473. The record demonstrates that CR 11 sanctions were appropriate and necessary. The partial satisfaction was not based on the facts or the law, and it was filed for an improper purpose. Biggs, 124 Wn.2d at 201.

First, there were no previous judgments in any of the prior orders Berry prepared that could be "re-incorporated" into the January 20, 2015, Adjusted Order of Child Support on Revision. Compare CP 1209, 1211-1213 (January 15, 2014, initial orders), CP 1491-1492 (June 17, 2014, order following reconsideration), and CP 1799-1800 (November 21, 2014 order granting clarification following revision) with Resp. CP. ___ (Partial Satisfaction). Second, there was no legal or factual basis for Berry to believe the trial court actually awarded prejudgment interest. The trial court heard and rejected Berry's argument regarding prejudgment interest by not including it in the final order. CP 1822, 1834. Berry recognized this by submitting proposed final orders did not contain prejudgment interest. See CP 1804-1806 (calculating total attorney fees to Sheila at $36,340.00 based on original fee award of $38,250.00 less $1,910.00 awarded to Ken). Third, the trial court specifically ordered the January 20, 2015 order superseded the commissioner's final June 17, 2014 order, rendering it null and void. CP 1840. There is simply no good faith argument that interest can continue to accrue on an order that has been nullified.

The partial satisfaction was filed solely to force Ken to pay an additional $4,442.82 to be done with the litigation. Berry even rejected Ken's offer to pay the full amount owed (without any offset for the

amount Sheila owed to Ken), place the disputed additional amount into Ken's attorney's trust account, and let the court decide the issue in exchange for a full satisfaction. Instead, Berry threatened to pursue collection remedies if "Ken continue[d] to refuse to pay what he owes." CP 3443. This unreasonable and improper; until the full satisfaction was entered, it impacted Ken's business dealings. The trial court abused its discretion by not ordering CR 11 sanctions against Berry and Sheila.

L. THIS COURT SHOULD DECLINE TO AWARD SHEILA ATTORNEY FEES ON APPEAL WHEN THE ISSUES SHE RAISES ARE FRIVOLOUS AND INSTEAD AWARD KEN FEES ON APPEAL UNDER RAP 18.9(a).

Sheila also seeks fees on appeal under RCW 26.09.140. An award of fees on appeal is discretionary. In re Marriage of Raskob, 183 Wn. App. 503, 520, 334 P.3d 30 (2014). Sheila summarily argues that her "appellate issues have merit" and she "needs assistance to pay her attorney fees" based on the trial court's earlier finding. Appellant's brief, p. 50. This Court should decline to grant Sheila's request. All of the trial court decisions Sheila complains about are discretionary, yet she does not challenge critical findings to support her arguments that the trial court abused its discretion. Her arguments about how the trial court calculated Ken's income are misleading. Her arguments about post-secondary education are moot. Her argument requesting extrapolated child support

based on Ken's wealth ignores clear case law to the contrary. Her arguments about attorney fees ignore significant findings against her. Overall, her brief simply regurgitates many of the arguments she previously made in the trial court without any further analysis in hopes of a different outcome in this Court.

Instead, this Court should award Ken his attorney fees on appeal pursuant to RAP 18.9(a). Sheila's appeal is frivolous. She presents no truly debatable issues on appeal, and there is no reasonable possibility of reversal. In re Marriage of Foley, 84 Wn. App. 839, 847, 930 P.2d 929 (1997). This appeal is simply Sheila's final attempt to force Ken to bear the expense of her latest round of overzealous litigation in a dissolution case that has lasted over a decade. It is time for the Court to send a clear message to Sheila that RCW 26.09.140 is not a tool she can rely upon to ensure "free" access to the courts.

VI. CONCLUSION.

This Court should affirm the trial court's decisions regarding the issues Sheila raises on appeal. The trial court's challenged findings are supported by substantial evidence and all of the findings support the trial court's discretionary decisions. This Court should reverse the trial court's decision not to impose CR 11 attorney fees and sanctions on Sheila and Berry after Berry accepted Ken's payment for Sheila's attorney fees and

costs and filed only a partial satisfaction of judgment. This Court should remand back to the trial court for a hearing to determine the amount of fees/sanctions to impose. Finally, this Court should deny Sheila's request for attorney fees on appeal, and grant Ken's request for fees.

Respectfully Submitted this 7th day of October, 2015.

BREWE LAYMAN P.S.
Attorneys at Law

By _____
Karen D. Moore, WSBA 21328
Attorney for Respondent

APPENDIX A

Ken Kaplan

From: Ken Kaplan <ken@kkaplanlaw.com>
Sent: Monday, July 13, 2015 2:24 PM
To: 'kohlskids@gmail.com'
Subject: RE: CR2a with minor corrections

Ok, I accept this email right now. Check on the way. ken

From: kohlskids@gmail.com [mailto:kohlskids@gmail.com]
Sent: Monday, July 13, 2015 1:05 PM
To: ken
Subject: Re: CR2a with minor corrections

Dear Ken,
If agreed, please sign and return ASAP. Thanks.

CR2A:

1. I recalculated the $1,809.46 Commissioner Jeske finding (fka, judgment summery for medical support) you owed to be $1,743.04 based on the revision support order. You agree to no prejudice and shall pay any additional amounts required if there is a judicial change as an outcome to present Appeal. You agree to send payment of $1,743.04 within 5-days on this reimbursement.

2. Based on my 6/24/15 letter regarding Current medical expenses owed and the receipts submitted; you agree to offset our current medical expenses owed each other with a remaining balance of $279.37 payable to Sheila within 5-days. You agree to no prejudice; if our percentages of support required for these expenses changes as a result of the present Appeal, the judicial change shall be applied even to this payment.

3. You agree to pay me $51.88 within 5-days to resolve textbook issues for the school years 2012-13, 2013-14 and 2014-15. You agree to no prejudice; if Appeal is remanded and judicial change requires you to pay additional percentage of 100% of these costs; you shall reimburse me the additional amount. (If 100% = $20.62 for 2013-14 and 2014-15 school years). '

4. You agree to pay me $70. for BoyScout expenses. This resolves completely our BoyScout expense reimbursement issue in FINALITA' !

5. I agree to pay you $398.40 (overpayment of support under the current order of support) within 5-business days of receiving your payments in full on reimbursements noted above. You agree the $398. shall not prejudice the present Appeal and you may be required to pay this amount back. You also agree it does not prevent the appeal and remand from proceeding so that support owed might change in the future.

This CR2 agreement shall be deemed withdrawn without further notice if it is not accepted in its entirety on or before this Wednesday, July 15th, 2015.
--Sheila

7/13/15

APPENDIX B

SUMMARY OF FEES AND COSTS REQUESTED BY SHEILA KOHLS

Date	Hours Billed	Fees Incurred	Costs Incurred	CP Citation
11/8/13	111.27	$36,677.00	$1,699.46	255-267
11/15/13	140.47	$46,772.00	$3,938.71	976-989
12/9/13	163.45	$54,959.00	$5,360.31	1092-1109
12/16/13	171.45	$57,395.00	$5,360.31	1188-1205
3/24/14	20.10	$ 6,335.00 (Berry III) $ 540.00 (Zundel)	no update	1324-1328
7/7/14	208.25	$69,025.00	$6,323.14	1549-1571
9/28/14	243.05	$81,155.00	no update	1703-1721
10/21/14	2.7	$ 945.00[1]	no update	1773-1774
11/3/14	13.1	$ 4,585.00[2]	no update	1794-1795
Total Less	258.85	$86,685.00 (1,680.00[3])	$6,323.14	
TOTAL FEES AND COSTS		**$85,005.00**	**$6,323.14**	**$91,328.14**

[1] 2.7 hours x 350.00/hour = $945.00
[2] 13.1 hours x 350.00/hour = $4,584.00
[3] Acknowledged double billing on 10/22/13. CP 1799.

APPENDIX C

SUMMARY OF FEES AND COSTS REQUESTED BY KEN KAPLAN

Date	Hours Billed	Fees Incurred	Costs Incurred	CP Citation
11/8/13	94.80	$24,327.00	$ 242.00	650-659
11/15/13[1]	47.40	$18,335.00	included in fees	846-850
12/13/13	192.35	$44,538.00[2]	$1,717.42	1159-1171
8/29/14[3]	7.90	$ 1,838.00	none	1685-1690
Total	148.25	$46,376.00	$1,717.42	
TOTAL FEES AND COSTS		**$46,376.00**	**$1,717.42**	**$48,093.42**

[1] This declaration shows additional hours/costs between 11/1/13 and 11/14/13 only. CP 846.
[2] Total shows reduction for professional credit of $2,400.00. CP 1159.
[3] Fees and costs associated only with motion to strike Sheila's post revision hearing memorandum.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 7th day of October , 2015, I caused a true and correct original and one copy of the foregoing document to be delivered to the following:

Richard D. Johnson
Court Administrator
The Court of Appeals of the State of Washington
Division I
One Union Square
600 University Street
Seattle, Washington 98101-4170
BY: Hand Delivery

I also caused a true and correct copy of the foregoing document to be delivered to the following:

Attorney for Appellant

C. Nelson Berry III
Berry & Beckett
1708 Bellevue Ave
Seattle, WA 98122
BY: US Mail and email to cnberryiii@seanet.com

Dated this 7th day of October, 2015 at Everett, Washington.

Karen D. Moore, WSBA 21328