No. 97730-5
No. 78697-1-I

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Marriage of

STUART J. SINSHEIMER
Respondent

and

ELIZABETH L. KRUGER
Appellant

ON REVIEW FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

PETITION FOR REVIEW

PATRICIA NOVOTNY
Attorney for Petitioner
3418 NE 65th Street, Suite A
Seattle, WA 98115
(206) 525-0711

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Elizabeth Kruger, appellant below, asks this Court to accept review of the Court of Appeals' decision terminating review. See Part B.

B. COURT OF APPEALS DECISION.

Petitioner Elizabeth Kruger, seeks review of the Court of Appeals' decision entered on July 29, 2019, and the decision denying reconsideration, entered on August 28, 2019, by which the court relieved the father of his obligation to pay his share of the balance owed for their son's postsecondary education.

C. ISSUES PRESENTED FOR REVIEW.

1. Does Washington's child support statute and the policy behind it permit voiding a parent's child support obligation where a child waits to provide his parents with access to his online college account until after the appellate court clarified such access to be an "educational record" under the statute, a question of first impression?

2. Where a parent withholds all of his share of the child's postsecondary education support during the pendency of the appeal on the "online access" issue and the other parent provides all support necessary for the child to continue his education, is that parent entitled to reimbursement?

3. On what authority may a trial court void a parent's child support obligation and was that authority lacking here?

4. Where the court had no jurisdiction over the child when it ordered him to perform an act, can the court penalize the child and his mother when an appellate decision later clarifies that the act may be a condition of his child support and the child then performs the act?

5. Where the child support orders (and their underlying Property Settlement Agreement) are silent as to any consequences for delay in providing an educational record, does the court violate the statute and due process when it voids a parent's vested child support obligation?

6. Did the court retroactively modify the support order when it imposed a retroactive deadline and previously unstated consequence?

D. STATEMENT OF THE CASE.

Kruger and Sinsheimer dissolved their marriage by agreement in 2005. CP 136-150. Their Property Settlement Agreement (PSA) included child support provisions (CP 145-146), pertinently, their agreement to share equally the costs of the postsecondary education (PSE) for their two children. CP 143. Specifically, the PSA provided that after exhausting funds saved for college, the parents would split equally "[a]ll post-secondary college expenses," meaning "room and board, tuition, travel (4 round-trip tickets per school year), books and fees required by the

institution." The PSA provided further that the children would be entitled to these payments so long as they "make satisfactory progress toward a Baccalaureate degree and be in attendance on a full-time basis."

Presumably, the agreement embodied a series of compromises on financial issues overall, of which postsecondary education was a part.

When the eldest son (N.S.) entered college, he received a scholarship. In 2010, the parties agreed the scholarship would not reduce their obligations to pay "[a]ll post-secondary college expenses" for N.S. CP 143. In other words, the child was permitted to retain the scholarship funds for his own uses.[1] Nor did the parties have any other disputes regarding the eldest son.

When the second son (J.S.) entered college, he also received a scholarship. However, Sinsheimer would not agree to treat J.S.'s financial aid as they had treated N.S.'s. Instead, Sinsheimer subtracted from his support payment an amount reflecting J.S.'s financial aid, which led Kruger to seek enforcement of the PSA. In 2015, the court commissioner clarified the PSA did "not authorize a parent to deduct scholarships or grants from his or her share of post-secondary expenses." CP 153. Rather,

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[1] These and the following facts, unless otherwise noted, are summarized in *Marriage of Sinsheimer and Kruger,* Unpublished Opinion (75675-3-I, January 16, 2018), 2 Wn. App. 2d 1005 (2018).

J.S. "shall be entitled to keep his scholarship funds and financial aid to pay for his personal expenses…" CP 154.[2]

In response to a last minute request by Sinsheimer that he should receive access to J.S.'s personal online college account, the court declared the statute controlled what records the parents should receive, i.e., "[e]ducation records of postsecondary educational institutions are limited to enrollment and academic records necessary to determine, establish, or continue support …," citing RCW 26.09.225(3) and RCW 26.19.090. CP 161. The father was ordered to pay the funds he had withheld. CP 153.

J.S. continued to provide his parents by email copies of his college bill each semester. Sinsheimer refused to pay unless provided online access and Kruger sought enforcement.[3] A court commissioner disagreed the statute required online access, telling the parents to consult the school's website or request further information from J.S. CP 166. The commissioner also observed the court had no authority to order J.S. to

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[2] On revision the court upheld the financial aid clarification but held the parties were not responsible for J.S.'s uninsured medical expenses. J.S. has multiple medical issues (two major surgeries, broken leg and rehabilitation, asthma, kidney ailment), which the court required him to pay. CP 116, 161, 243-244.

[3] Not all expenses were included on the college bills, prominently medical insurance, books, and transportations costs, which were purchased from vendors external to the college.

provide access to his personal account and further observed how a parent's failure to pay could jeopardize a child's education. CP 166.

On revision, a trial judge agreed Sinsheimer should pay the amount on the college bills J.S. had sent, finding them to be sufficient documentation of the obligation. CP 171-172. But the judge then ordered J.S. to provide "full online access" to his college financial account "showing all charges, credits, debits, and payments to the account." CP 172, 173. The court also requested J.S.'s college (William & Mary) to provide the parents online access. CP 173.

Kruger appealed. Division One agreed the court had no personal jurisdiction over J.S. or the college, declaring void those portions of the court's order directed at J.S. and the college. However, the court rejected the privacy arguments advanced on behalf of J.S., interpreted the statute to include online financial accounts, and declared "J.S. has a choice, he can provide access, in which case his parents must pay their equal share of his postsecondary tuition and expenses, or he can elect to withhold access and perhaps lose his financial support."

J.S. provided his parents with access to his personal online college financial account.

Kruger and Sinsheimer then engaged in negotiations over what amount Sinsheimer owed for the final two years of J.S.'s college, by then

nearly completed and Kruger having advanced all required funds. Unable to reach an agreement, Kruger again sought enforcement.

The trial judge, having retained jurisdiction, found J.S. "would have reduced or mitigated the parties' bickering and inability to communicate effectively" had he provided online access when ordered to do so (the order reversed on appeal).[4] The court then relieved Sinsheimer of all obligation to contribute to the last two years of J.S.'s college education.

Kruger again appealed and Division One upheld the ruling. In doing so, Division One quoted the trial court as saying in 2016, "Jared has a choice, he can provide access in which case his parents must pay their equal share of his postsecondary tuition and expenses, or he can elect to withhold access and perhaps lose his financial support." In fact, the trial court did not make this statement. The trial court ordered J.S. to provide

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[4] The court observed the "bickering and inability to communicate effectively … have characterized, and continue to characterize, this litigation." These parties settled their dissolution by agreement. Periodically, over the 14 years since dissolution, the parties engaged in various disputes and dispute resolution processes (e.g., arbitration, litigation). However, in 2010. they entered into another agreement about the eldest son's scholarship. Five years later, Sinsheimer refused to apply the same treatment to the second son and withheld his child support payment. He also resisted paying certain expenses related to transportation (CP 160, 162), uninsured medical (CP 161: making J.S. responsible for those expenses), and tax exemption (CP 160, referring to PSA). Kruger was awarded fees as the prevailing party on her enforcement action. CP 168. Nearly all of these disputes preceded the issue of online access, so J.S. was not in a position to prevent his parents from disagreeing on all these other issues.

access and Division One agreed the court did not have that authority. Rather, Division One interpreted "educational record" to include online access, a question Division One expressly described as a "legitimate" legal question (rejecting a "bad faith" argument by Sinsheimer). In 2018, Division One further said J.S. could provide access, "in which case his parents must pay their equal share of his postsecondary tuition and expenses, or he can elect to withhold access and perhaps lose his financial support."

J.S. then provided access.

Nonetheless, blaming J.S. for the parents' inability to agree on the amount owed, the court voided the father's obligation of support for the last two years of J.S.'s college education, about $50,000, and Division One affirmed.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

No statutory provision or precedent authorizes the court to do what it did here. Our state's policy is to protect children from the effects of their parents' divorce (and disagreements), including by permitting courts to order postsecondary educational support and, certainly, by permitting parents to obligate themselves for such support. The statute imposes conditions imposed on the child for this support, but nowhere relieves a

parent of a support obligation for a failure or delay in meeting those conditions, as discussed below.

The Court of Appeals' decision affirming the trial court's arbitrary and policy-undermining order conflicts with orders of this Court and the Court of Appeals on the rights of children to the support of their parents. RAP 13.4(b)(1) and (2). Depriving the mother of reimbursement for the father's share of support, with no notice or process, likewise conflicts with this precedent and raises constitutional concerns. RAP 13.4(b)(1), (2), and (3). Given the primacy of the state's duty to children, any decision that undermines the legislative intent to protect children, wherever possible, from the effects of their parents' dissolution presents an issue of substantial public interest. RAP 13.4(b)(4). Finally, this unforeseeable consequence of the mother's appeal infringes on her constitutional right to appeal. RAP 13.4(b)(3).

1. THE COURT'S ORDER CONTRAVENES ALL OUR STATE'S NORMS ON CHILD SUPPORT – WHETHER STATUTE, PRECEDENT, OR POLICY.

Children have a right to support. In all proceedings in which child support is determined or modified," the court "shall" apply the child support schedule. RCW 26.19.035. Our state permits but does not require parents to support their children's postsecondary educational endeavors. RCW 26.19.090. These parents agreed to take on that obligation. CP 136-

150. "[I]f the parties agree to do more for the children than the law would otherwise require, the agreement is binding upon the parties." Horenstein, 19 *Wash. Prac., Fam. And Community Prop.* L. § 16:17, citing *Bauer v. Bauer*, 5 Wn. App. 781, 789-90, 490 P.2d 1350, 1354 (1971).

The parties' agreement conditions the child's right on his progress toward a degree and his full-time attendance. The right to support is further conditioned by statute on the child providing educational records. RCW 26.19.090, RCW 26.09.225. By decision of Division One in 2018, this statutory provision came to mean the child must, in addition to providing the parents copies of financial statements from the college, provide them with access to his online financial account with the college. He did so.

When the mother sought reimbursement for the payments she had made for his final two years of college, the court wiped clean the father's obligation because the online access had not been provided until after Division One decided the issue.

No legal or equitable principle supports this punitive action. No motion for contempt was filed nor was laches or equitable estoppel established. Certainly, the child support statute does not countenance this action.

The statute speaks of a consequence only when it addresses what happens when a child does not comply with the requirements to enroll, actively pursue study, and be in good academic standing. RCW 26.19.090(3). Even where a child fails to comply with these requirements, support is not terminated; it is "automatically suspended." Id.[5] In an unpublished decision, Division One recently noted the legislature's preference "for suspension, not termination, if a child fails to comply with court conditions." *In re Marriage of Berry & Berry*, 197 Wn. App. 1056 (2017), citing RCW 26.19.090(3).

Notably, the legislature did not choose to terminate support under these circumstances, a choice consistent with the beneficent intentions of the statute, which seeks to ameliorate for children the effects of their parents' dissolution, including by permitting postsecondary child support. *Childers v. Childers,* 89 Wn.2d 592, 598, 575 P.2d 201 (1978).

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[5] Subsection (3) provides:

> The child must enroll in an accredited academic or vocational school, must be actively pursuing a course of study commensurate with the child's vocational goals, and must be in good academic standing as defined by the institution. The court-ordered postsecondary educational support shall be automatically suspended during the period or periods the child fails to comply with these conditions.

Regarding educational records, the statute declares the child "shall also make available all academic records and grades to both parents as a condition of receiving postsecondary educational support." RCW 26.19.090(4). The statute does not provide a mechanism for dealing with noncompliance. However, in addressing a variation on this question, Division Three disagreed with a parent's assertion that he was relieved of his support obligation because the child did not provide records to him when there was an alternative method for calculating the father's obligation and because voiding the obligation was not made a consequence of the order. *In re Marriage of Jess*, 136 Wn. App. 922, 929, 151 P.3d 240, 243 (2007). The result here conflicts with *Jess.*

Similarly, where children were unable to attend school due to injury and lack of funding, the court rejected the parent's argument that his obligation was terminated because of the absences. *Kruger v. Kruger*, 37 Wn. App. 329, 331–32, 679 P.2d 961, 962 (1984). The result here also conflicts with *Kruger.*

Again, the results in *Jess* and *Kruger* comport with our state's solicitude for children, including children of parents who have divorced.

The statute further provides "[e]ach parent shall have full and equal access to the postsecondary educational records as provided in RCW 26.09.225." RCW 26.19.090(4). This provision, cited from the Parenting

Act, requires the parents be treated equally regarding records access in all matters. This provision is not at issue here. Neither parent had access to the child's online account until Division One clarified educational records includes such access. *See, also,* RCW 26.09.225(1) (equal access).

Finally, the statute defines "[e]ducational records" as being "limited to enrollment and academic records necessary to determine, establish, or continue support ordered pursuant to RCW 26.19.090." RCW 26.19.225(3). Division One determined this provision required J.S. to give his parents access to his online financial account at the college, though J.S. had provided financial statements to his parents (and information about fees and tuition is available on the college website).

In any case, nowhere does the court – at either the trial or appellate level – require performance of this task by a certain date. Nor does the statute anywhere impose a consequence for any delay in performance of this task.

By contrast, our law is replete with support for a parent's right to collect an arrearage from a non-paying parent. Statute allows for it, including by contempt. RCW 26.18.050. Indeed, this power extends beyond the child's majority and dependency, in light, again, of the state's broader policy protective of children whose parents have divorced. *State*

ex rel. Wulfsberg v. MacDonald, 103 Wn. App. 208, 211, 11 P.3d 333, 335 (2000).

These parents agreed to take on the obligation to pay for their sons' college education. With respect to the eldest son, they further agreed the son's financial aid would not diminish the parents' obligation. In other words, the child was free to keep the aid for the many other expenses that arise during college, outside the list of those to which the parents had obligated themselves.

Sinsheimer would not agree to similar treatment of the second son's financial aid and then unilaterally withheld that portion from his payment. More litigation ensued, with issues multiplying. As arguments came and went, Sinsheimer asserted a right not just to the financial statements sent to him by the son from the college, but a right to the son's personal online account. That story is recited above and concluded when the son yielded his privacy and granted his parents access to his account. Division One expressly rejected Sinsheimer's argument that Kruger's appeals was in "bad faith." Slip Op., at *7.[6] All that remained to do was to

[6] It was Sinsheimer who had been found intransigent by the family law commissioner, though the judge revised that decision, awarding Kruger fees instead as a prevailing party under RCW 26.18.160. CP 168.

calculate the support owed by the father and order it paid. The court had no authority to void the obligation.

Instead, the court essentially punished the son and the mother for the assertion of the child's rights on appeal, though the mother was partly vindicated when Division One agreed the trial court erred by ordering the child (and the college) to provide access. In doing so, the court not only lost sight of the limits to its own authority, but of the broader context, including the father's different treatment of the two sons, as well as our state's policy of limiting the disadvantages visited upon children as a consequence of their parents' dissolution. Here, the parents' ongoing difficulties were placed squarely on the back of the son, whose relationship with his father, for reasons unreported in this record, is strained. The court's duty in these circumstances is to enforce as to the second son the same obligation the father satisfied as to the first son, an obligation the father contracted to in the PSA. Instead, the court took the father's side against the son, burdening the mother with all the support for half of the child's college education, bestowing on the father a windfall, and offering to other similarly inclined parents an appellate court decision to aid them in evading their obligation to support their children.

2. NOR COULD THE COURT REACH THIS RESULT BY ANY OTHER MECHANISM.

The court can modify child support orders, on satisfaction of certain criteria, but may not do so retroactively. RCW 26.09.170(1); *Schafer v. Schafer,* 95 Wn.2d 78, 80, 621 P.2d 721, 723 (1980). The court's insertion here of a "due date" and a consequence retroactively modified the parties' Property Settlement Agreement and the subsequent orders clarifying that agreement. A modification "occurs when a party's rights are either extended beyond or reduced from those originally intended in the decree." *In re Marriage of Christel and Blanchard,* 101 Wn. App. 13, 22, 1 P.3d 600, 605-606 (2000). Retroactively imposing a deadline and a consequence modified the support, reducing the mother's right to reimbursement to zero. This conflicts with *Schafer* and *Christel* and other cases on modification.

The court can enforce a property settlement agreement by resort to contract principles. Here, the mother upheld her part of the bargain, and carried the father's part for two years. No contract existed between the parents and the child, whose reluctance to share his personal financial account raised a "legitimate question" regarding the meaning of "educational records" in this electronic age. No contract principle would

warrant voiding the father's obligation on these facts. Indeed, the father got what he bargained for in the PSA: his children were college educated.

The court can relieve a child support obligation on equitable principles, but only in unusual circumstances, and never where doing so would work an injustice to the other parent or to the child. none of which apply here.

Courts have applied equitable principles to some claims for retrospective support when doing so did not work an injustice to either the custodial parent or to the child. *See, e.g., Hartman v. Smith,* 100 Wn.2d 766, 769, 674 P.2d 176 1984) (equitable estoppel); *In re Marriage of Watkins,* 42 Wn. App. 371, 710 P.2d 819 (1985), *review denied,* 105 Wn.2d 1010 (1986) (laches). "None of these cases, however, hold a trial court has unfettered discretion in the exercise of its equitable powers." *In re Marriage of Shoemaker*, 128 Wn.2d 116, 122–23, 904 P.2d 1150, 1153 (1995). Here, these circumstances are not present and were not the basis for the court's decision, in which it exercised "unfettered discretion."

A court has contempt powers, but it cannot exercise them against the child, anymore than it could order the child or the college to grant online access. And the mother did not have the power to grant access to the son's online account. Moreover, the exercise of the court's contempt

power must be undertaken with great care and due process, none of which happened here.[7]

The court, of course, used none of these mechanisms, and none of these mechanisms would have permitted the voiding of the father's obligation. Simply, there is no mechanism by which the court could lawfully reach this outcome. Its order is arbitrary and capricious.

There was a time when child support was largely within the court's discretion. Now, the statute strictly limits the court's discretion, bringing uniformity and predictability to a subject previously plagued by inconsistency and unpredictability. "These purposes cannot be achieved except accidentally if the individual trial courts are left to pick and choose which provisions of the statute to apply…" *In re Marriage of Daubert,* 124 Wn. App. 483, 502-503, 98 P.3d 1216 (2004), *overruled on other grounds by McCausland v. McCausland*, 159 Wn.2d 607, 152 P.3d 1013 (2007). Nor can they be achieved if the court ignores the statute entirely.

In short, child support is an area where clear, bright lines are not only desirable, but required.[8] Child support operates almost mechanically

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[7] *Johnston v. Beneficial Management Corp of America,* 90 Wn.2d 708, 713-14, 638 P.2d 1201 (1982) (order will not be expanded by implication beyond the meaning of its terms and the order must be clear and specific so that party knows when the order is exceeded or violated); *Daly v. Snyder,* 117 Wn. App. 602, 606, 72 P.3d 780 (2003) *rev. denied,* 151 Wn.2d 1005 (2004) (contempt power is to be used with great restraint).

[8] In fact, compliance with the statute is mandatory under state and federal law, a reflection of the former chaos that prevailed absent these structures. *See, e.g.,* 42 U.S.C.§

in most instances in service to the statute's two objectives: to support the children according to their needs and to do so fairly as between the parents. RCW 26.19.001. This case violates both these goals and every conceivable norm.

F. CONCLUSION.

In the first appeal, Division One answered a question of first impression, defining educational records to include a child's online financial account, prompting the child to yield access. In the second appeal, Division One voided the father's obligation blaming the child for the parents'dispute. This result is arbitrary and unfair. For these reasons and those elaborated upon above, this case merits review under RAP 13.4(b)(1), (2), (3), and (4).

Dated this 26th day of September 2019

Respectfully submitted,

/s/ Patricia Novotny
WSBA #13604

ATTORNEY FOR PETITIONER
3418 NE 65th Street, Suite A
Seattle, WA 98115
Telephone: 206-525-0711
Fax: 206-525-4001
Email:patricia@novotnyappeals.com

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654 (federal government's mandate that States establish mandatory guidelines for determining child support awards).

FILED
7/29/2019
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of STUART J. SINSHEIMER, Respondent, and ELIZABETH L. KRUGER, Appellant.	DIVISION ONE No. 78697-1-I UNPUBLISHED OPINION FILED: July 29, 2019

DWYER, J. — Elizabeth Kruger and Stuart Sinsheimer have been embroiled in a four-years-long dispute over postsecondary expenses for their son, Jared. In this appeal, Kruger avers that the superior court committed reversible error in an order clarifying the parties' obligations. Finding no merit in any of her contentions, we affirm.

I

This is the second appeal to us in this action. See In re Marriage of Sinsheimer & Kruger, No. 75675-3-I, (Wash. Ct. App. Jan. 16, 2018) (unpublished), http://www.courts.wa.gov/opinions/pdf/756753.pdf.

On June 22, 2016, as a remedy to address the parties' ongoing acrimony and to reduce the need for further court intervention, the superior court ordered that, "[g]oing forward," Jared shall provide online access to his college financial

account "as a condition of his parents' post-secondary support obligations." In rejecting Kruger's appeal of the imposition of this condition, we concluded that,

> while the court cannot enforce the requirement that Jared provide access to his financial accounts, such as by holding him in contempt, the payment of support can be conditioned on Jared's action. . . . Thus, under the trial court's order, Jared has a choice, he can provide access in which case his parents must pay their equal share of his postsecondary tuition and expenses, or he can elect to withhold access and perhaps lose his financial support.

Sinsheimer, No. 75675-3-I, slip op. at 11.

On March 21, 2018, Jared gave Sinsheimer online access to his college financial account. That same day, Kruger requested that Sinsheimer reimburse her for his share of postsecondary expenses incurred between July 2016 and February 2018. Sinsheimer then tendered Kruger a check for most, but not all, of those expenses.[1] Afterward, they disputed the balance owed and, again, sought court intervention.

On June 14, 2018, Sinsheimer asked the superior court to declare that he had no postsecondary support obligations after June 22, 2016 or had satisfied his obligation with the check tendered to Kruger. The next day, Kruger moved to enforce the postsecondary support obligation and asked that Sinsheimer be ordered to pay the full amount of her reimbursement request and her attorney fees.

On July 5, 2018, the superior court granted Sinsheimer's motion and denied Kruger's. It found that the expenses for which Kruger was seeking

[1] The record is unclear as to whether Kruger ever deposited the check she received from Sinsheimer.

reimbursement were incurred "during a period when Jared had not provided online account access to Sinsheimer" and concluded, consequently, that Sinsheimer was not obligated to pay those expenses.

Kruger appeals.

II

Kruger first contends that the superior court's July 2018 order improperly modified the parties' postsecondary support obligation. She is incorrect.

A modification occurs when the effect of the court's ruling causes a party's right to be "either extended beyond or reduced from those originally intended in the decree," In re Marriage of Christel, 101 Wn. App. 13, 22, 1 P.3d 600 (2000), whereas a clarification "is merely a definition of the rights which have already been given and those rights may be completely spelled out if necessary." Rivard v. Rivard, 75 Wn.2d 415, 418, 451 P.2d 677 (1969). "A court may clarify a decree by defining the parties' respective rights and obligations, if the parties cannot agree on the meaning of a particular provision." Christel, 101 Wn. App. at 22.

Here, in June 2018, after Jared gave his parents online access to his college financial account, both Sinsheimer and Kruger asked the superior court to intervene and clarify the extent of Sinsheimer's postsecondary support obligation for expenses incurred between July 2016 and February 2018. After addressing the impact of its June 2016 order, the superior court, as requested, clarified Sinsheimer's support obligation. The superior court's July 2018 order was not a modification.

III

Kruger next contends that the superior court erred by retroactively imposing a deadline by which Jared was to provide his parents with online access to his financial account and then imposing a consequence for failing to meet that previously unknown deadline. She is wrong.

The superior court did not retroactively impose the condition that resulted in Jared losing his postsecondary support. As the superior court aptly explained in its July 2018 order,

> The condition entered on June 22, 2016, left Jared with options: "Jared has a choice, he can provide access in which case his parents must pay their equal share of his postsecondary tuition and expenses, or he can elect to withhold access and perhaps lose his financial support." Despite the June 22, 2016 Order . . . . Jared did not give Sinsheimer online access to Jared's financial account at the college until March 21, 2018.

The superior court's June 22, 2016 order was effective when entered.[2] In ruling on the parties' June 2018 motions, the superior court did nothing more than apply its June 2016 order to the facts and evidence presented. There was no error.

IV

Kruger also contends that the superior court's July 2018 order, which resulted in Jared losing his postsecondary support for failing to timely provide online account access, runs afoul of Washington's public policy for child support. We disagree.

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[2] Although Kruger appealed the June 2016 order to us, she did not attempt to secure a stay of enforcement of that order pending appeal. See RAP 8.1. Instead, Kruger, like Jared, simply ignored the June 2016 order until March 2018.

"It is not the policy of this State to require divorced parents to provide adult children with a college education in all circumstances." Childers v. Childers, 89 Wn.2d 592, 601, 575 P.2d 201 (1978). Payment of postsecondary support may be conditioned on acts within the control of the adult child. Sinsheimer, No. 75675-3-I, slip op. at 11 (citing In re Marriage of Kelly, 85 Wn. App. 785, 795, 934 P.2d 1218 (1997)).

Moreover, the superior court's order was governed by the law of the case. Once an appellate court has ruled on an issue, the appellate court's decision becomes the "law of the case"[3] and the trial court is bound by the appellate court's determination. State v. Strauss, 119 Wn.2d 401, 412, 832 P.2d 78 (1992). In Kruger's first appeal, we concluded that "payment of support can be conditioned on Jared's action" and that Jared could choose to provide access that would require his parents to "pay their equal share of his postsecondary" expenses, or he could "elect to withhold access and perhaps lose his financial support." Sinsheimer, No. 75675-3-I, slip op. at 11.

Our decision in the prior appeal constitutes the law of this case and bound the parties and the superior court in the 2018 proceedings. The superior court did not abuse its discretion by ordering that Sinsheimer was not obligated to pay postsecondary expenses during the period Jared failed to provide online account access.

[3] The law of the case doctrine is applied in order "'to avoid indefinite relitigation of the same issue, to obtain consistent results in the same litigation, to afford one opportunity for argument and decision of the matter at issue, and to assure the obedience of lower courts to the decisions of appellate courts.'" State v. Harrison, 148 Wn.2d 550, 562, 61 P.3d 1104 (2003) (quoting 5 AM.JUR.2d Appellate Review § 605 (2d ed. 1995)).

V

Kruger contends that two of the superior court's findings of fact—one regarding the amount of the parties' bickering and the other regarding the credibility of Kruger's proof of expenses—are not supported by the evidence. We deem it unnecessary to discuss these findings. This is so because they are immaterial. Even if the findings were unsupported, the error was harmless and would not warrant reversal, given our resolution of the decisive issues in this case. See McLeod v. Keith, 69 Wn.2d 201, 203-04, 417 P.2d 861 (1966) (when ample evidence supports the decisive issues "the presence of unsupported and immaterial findings is of no consequence").

VI

Kruger argues that the superior court should have entered an award of attorney fees in her favor for having to seek enforcement of a support obligation. Both parties request an award of attorney fees on appeal pursuant to RCW 26.18.160.[4] Because Kruger is not the prevailing party, she is not entitled to an award of attorney fees at trial or on appeal. Nor is Sinsheimer entitled to an award of attorney fees. Although Kruger did not prevail, there was no finding that she acted in bad faith.

[4] In any action to enforce a support or maintenance order, RCW 26.18.160 mandates that "the prevailing party is entitled to a recovery of costs, including an award for reasonable attorney fees. An obligor may not be considered a prevailing party under this section unless the obligee has acted in bad faith in connection with the proceeding in question." This rule applies to actions at trial and on appeal. See Rhinevault v. Rhinevault, 91 Wn. App. 688, 696, 959 P.2d 687 (1998) (citing In re Marriage of Capetillo, 85 Wn. App. 311, 932 P.2d 691 (1997)).

Affirmed.

WE CONCUR:

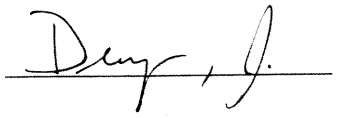
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of STUART J. SINSHEIMER, Respondent, and ELIZABETH L. KRUGER, Appellant.	DIVISION ONE No. 78697-1-I ORDER DENYING MOTION FOR RECONSIDERATION

The appellant Elizabeth Kruger having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

FOR THE COURT:



ZARAGOZA NOVOTNY PLLC

September 27, 2019 - 9:10 AM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	78697-1
Appellate Court Case Title:	In re the Marriage of: Stuart Sinsheimer, Resp v. Elizabeth Kruger, App

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