Washington State Supreme Court No. 98475-1
(Division III Case No. 366707)

SUPREME COURT, STATE OF WASHINGTON

ESTATE of SHENNEN GOODYEAR-BLACKBURN (substituted for Shennen Goodyear-Blackburn), ANSWERING PARTY

v.

SHAWN BLACKBURN, PETITIONER FOR DISCRETIONARY REVIEW OF DIVISION III DECISION

ANSWER OF SHENNEN BLACKBURN's ESTATE: REQUESTING DENIAL OF SHAWN BLACKBURN's REQUEST FOR DISCRETIONARY REVIEW

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I. INTRODUCTION TO ANSWER TO PETITION

A. RCW 26.19.080 Statute of Limitations Issue

The issue of first impression in this case is: What statute of limitations applies to the child support obligor's elective statutory right, under RCW 26.19.080, to be reimbursed by the obligee for over-payment of daycare expenses? Should the statute of limitations be ten years, or two years?

Shennen Goodyear-Blackburn argued two years, and this answer was supported by the Attorney General of the State of Washington, and was the opinion of Division Three. Shawn Blackburn argues that the statute of limitations is ten years, which is an untenable interpretation.

B. Organization of the Answer

The Estate of Shennen Goodyear-Blackburn (hereinafter "Shennen") appears to Answer Shawn Blackburn's (hereinafter "Shawn's") Petition for Discretionary Review of the Division III decision, and to ask the Court to deny review.

This Introduction begins with policy problems of Shawn's proposed interpretation, and then summarizes the statutory issue.

The court is asked to review the Division Three Appellate Brief and Reply, and to consider it incorporated herein, along with the amicus brief of the Attorney General.

In this Answer, Part II will address portions of Shawn's Statement of the Case, and Part III will present two cross-petitioner issues (one year of waived support as proper relief and equitable estoppel); next, part IV presents succinct argument, addressed in more detail in the Division Three briefing, and addressed in the amicus brief of the State Attorney General which supported Shennen's position. Part V will conclude the Answer.

C. Policy Nightmare and Gross Inequity of a 10-year Statute of Limitation for "Overpaid" Daycare

Under Shawn's proposed ten-year statute of limitations, every obligor parent who paid daycare over the prior decade could turn to the obligee parent and say: "I have brought an action under RCW 26.19.080 for refund from you of all daycare that I have paid going back ten years for which you do not have a receipt."

Here, in the Goodyear-Blackburn case, there was over $50,000 initially in contention, and that was for only one child, reduced to the $43,300 debt that was on appeal. If a family had several young children at dissolution, there could be over one hundred thousand ($100,000) dollars at stake, or even more.

This sudden judicial creation of a high-stakes cause of action would lead obligors to litigate in hopes of profit, as few people keep

receipts for two years -- especially those overwhelmed with working and caring for children -- let alone keep receipts for ten years. An entirely new field of family law would erupt in litigating ten-year refunds of daycare, with heinously inequitable debt imposed upon obligees. (This is why DCS limits relief for overpaid daycare to one year of waived child support.)

The obligees are still, despite societal changes, still more likely to be females, who are paid less than men. No matter what the sex of the obligee, the persons rearing the children will likely have lower incomes, compared to the obligors, due to the career-burdens of caring for children.

No real human being would be likely to have a decade of daycare receipts. And the court is asked to take judicial notice of the voluntary and involuntary changes of residence of young adults raising children.

The policy results would be catastrophic, which is why the Washington State Attorney General filed an amicus brief in support of Shennen's position.

As an additional policy factor, any obligor who has waited more than two years to check on, or review, his or her child's daycare situation should not be given an incentive to be even more inattentive, only to "wake up" ten years later to make inquiry into the daycare situation of his

or her child. In this case, especially, Shawn also lived in Spokane and was fully aware of Shennen and their son's living (and non-working) situation.

There is no reasonable policy basis to give RCW 26.19.080 a ten-year statute of limitation. A ten-year statute of limitations would be a policy disaster that would impose great and inequitable hardship upon the persons raising children in our society.

D. Statutory and Equity Issues

Societies, through our legislatures and courts, try to assist the obligees who are raising children, so that they receive reasonable support from obligors.

The ten-year statute of limitations *for child support* serves that legislative purpose of financially maintaining children, and serves the legislative purpose of reimbursing those persons raising the children for their day-to-day costs of parenting. This unusually long statute of limitations serve obligees, and nothing in the legislative scheme applies or implies a 10-year statute of limitation in favor of obligors.

By contrast, RCW 26.19.080 benefits obligors, and it is a distinct remedy for obligors, for which no statute of limitation has been named. Therefore, the catch-all, two-year, statute of limitations -- RCW 4.16.130 -- should apply to actions for reimbursement of overpaid daycare.

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II. SUPPLEMENTAL FACTS FOR STATEMENT OF THE CASE

Shennen here corrects only the most salient mis-statements or omissions of Shawn's Statement of the Case, which are in pages 1-4 in his Petition for Discretionary Review.

Shawn's Statement of the Case, on page 2 of his Petition, acknowledges that he knew he was paying daycare, as it was garnished.

Shennen had declared to the court that Shawn discussed the matter with her from time to time, and then would ignore the matter, waiving the issue in her mind. (11/6/18 Supplemental Dec. of Shennen at CP:247-51.) Shennen also forewent bringing a motion to raise child support in reliance upon Shawn leaving the daycare payment where it was. See, e.g., CP:248. At another juncture, Shennen was going to have to move to Arizona for financial reasons, unless Shawn would keep paying the total of child support and daycare, which he did, and she did not move to Arizona in reliance upon this agreement. CP:248 at point 7.

Further, in reliance upon Shawn's knowingly and willingly, continuing to "overpay" child care, Shennen did not bring a contempt against Shawn, nor require his full contribution to medical expenses. CP:248-49.

Shawn, at page 3 of his Petition, states that Shennen presented no evidence that Shennen "had used the day care funds for day care."

True! Shennen declared that Shawn had waived any objection to the extra monthly payment as part of their agreements. The facts show that Shawn had full notice of the "overpayment," and did nothing until it was time for him to sell the home or provide to Shennen half of its equity. It is not plausible that Shawn was not aware that Shennen was not working due to her cancer and treatments. See, e.g., 11/6/18 Supplemental Dec. of Shennen at CP:247-51.

The final supplemental fact of note is that Shennen put all of her estate in trust for her son. CP:164-76.

III. ANSWER TO SHAWN'S ARGUMENT

From Shawn's own statement of the case, the $43,300 trial judgment for the "overpayment" did not exist until the trial court created that judgment in this matter under appeal. Therefore, there is no "decree" in the sense of the term being used in RCW 4.16.020(2). This existence of the $43,300 debt was the very thing to be determined on the appeal, and now after remand.

A. Division Three is Correct Shawn's Action is Not an Action to Enforce a Child Support Order

There was no such amount ($43,300) in the divorce decree, as the issue had not yet been raised, nor even existed at that time. CP:9-6

(2009 – CS Order), 31-36 (Decree of Legal Separation, & 95-97 (Order Converting to Dissolution).

Indeed, logically the decree could not address daycare debts, as the time of entry of the decree (2009 & 2010) was prior to the alleged overpayment of daycare, and the right to reimbursement for overpaid daycare *is a separate statutory right* of optional operation under RCW 26.19.080, for which one must file and take action.

Division Three addressed this issue directly (emphasis added):

> Shawn argues his action is one to enforce the original child support order, which is part of the divorce decree. In support of his argument, he cites a provision of the support order that states: "The obligor may be able to seek reimbursement for day care or special child rearing expenses not actually incurred. RCW 26.19.080."[2] CP at 11. This provision uses the word "may" and directs the parties to RCW 26.19.080, which sets forth limitations and procedures for seeking reimbursements for overpaid day care or special child rearing expenses. We construe the provision as notifying the parties of a statutory right, not as creating a right in the decree for reimbursement. Shawn's argument would be stronger if the provision stated, "The obligor shall be liable for reimbursement of day care or special child rearing expenses not actually incurred." Because it does not say this, we conclude that Shawn's request for reimbursement of child care overpayments is not an action to enforce the child support order.

Goodyear-Blackburn v. Blackburn, 460 P.3d 202, 204 (Wash. Ct. App. 2020).

Issue Restated on Elective RCW 26.19.080 Statutory Right: Is an optional and elective statutory right to seek reimbursement for overpaid

daycare a "decree or judgment" under RCW 4.16.020(2)? ***Answer:*** No. It is a distinct statutory permissive right of reimbursement for which a two-year statute of limitations is appropriate.

B. Child Support Is Meaningfully Distinct from an Elective Day Care Refund

Next, Shawn tries to argue that the child support statute of limitations applies to daycare reimbursement.

Again, Division Three appropriately noted that child support is one thing, and elective daycare reimbursement is another (emphasis added):

> RCW 4.16.020(3) provides in relevant part: "The period prescribed for the commencement of actions shall be ... ten years ... [after] the eighteenth birthday of the youngest child named in the order for whom support is ordered for an action to collect past due child support ...."
>
> Here, Shawn seeks reimbursement for overpaid child care expenses. He does **not** seek to recover past due child support. Overpaid child care expenses are not past due child support. We conclude RCW 4.16.020(3) does not apply.

Goodyear-Blackburn v. Blackburn, 460 P.3d 202, 204–05 (Wash. Ct. App. 2020)

Issue Restated on Distinction Between Day Care Reimbursement and Child Support: Is an optional and elective statutory right to seek reimbursement for overpaid daycare a "decree or judgment" under RCW 4.16.020(2) one thing, and is child support another? ***Answer:*** Yes, they are meaningfully distinct.

C. A Debtor Obligee Is Not Transmuted into an "Obligor"

Shawn's argument turns rather desperately on conflating debtor-creditor terms of art with obligee-obligor as child support terms of art.

Shawn is alleging that any time the obligee owes a refund to the obligor, then, in Shawn's view, the obligee becomes an "obligor" under the provisions of the child support statutes. See, for example, page 7 of Shawn's Petition for Discretionary Review.

Debtor-obligees do not become child support oligors. For example, if a primary parent who is a *child support obligee* is found in contempt, and ordered to pay fees to the obligor parent, *the obligee parent becomes a debtor to the obligor* who is now a creditor on the contempt judgment.

Losing a contempt hearing does not transmute the child support obligee into an obligor. Nor would such a transformation of legal status occur if an oligee incurred an RCW 26.19.080 debt to an obligor.

Issue Restated on Distinction Between Creditor-Debtor and Obligee-Obligor: If an obligee parent is determined to owe the obligor parent reimbursement for overpaid daycare under RCW 26.19.080, does the obligee parent become an "obligor" or a "debtor." ***Answer:*** The obligee becomes a debtor until the daycare overpayment is reimbursed, and the obligor is a creditor, but the status under the child support statutes of obligor and obligee remains unchanged.

With those clarifications made, Division III properly concludes:

> Because neither RCW 4.16.020(2) nor RCW 4.16.020(3) apply, we conclude the two-year catchall statute of limitations applies.[3] We remand for the trial court to enter an amended judgment based on a two-year statute of limitations.

Goodyear-Blackburn v. Blackburn, 460 P.3d 202, 205 (Wash. Ct. App. 2020).

Shawn proceeds in his Petition to claim that reimbursing day care is a "duty of support" (Pet. at p.10). That is not tenable. The remainder of Shawn's Petititon repeats the foregoing untenable arguments.

IV. ANSWER TO SHAWN'S OTHER LEGAL AUTHORITIES

This section addresses just a few of the cases which Shawn distorted in his Petition in hopes of getting the court to conflate the distinct concepts reviewed, above.

A. *Stenberg v. Pac. Power & Light Co. (& Northern Grain case)*

Shawn is correct that the *Stenberg* case did overrule an archaic distinction between "direct" and "indirect" injuries for statute of limitation purposes, and applied the three-year statute of limitation to all actions for injuries:

> We hold RCW 4.16.080(2) applies to causes of action claiming both direct and indirect injuries to the person or rights of another and overrule the direct/indirect injury distinction promulgated in the case of *Northern Grain & Warehouse Co. v. Holst,* 95 Wash. 312, 163 P. 775 (1917) (hereinafter *Northern Grain*) and its

progeny.

Stenberg v. Pac. Power & Light Co., 104 Wash. 2d 710, 711, 709 P.2d 793, 794 (1985).

However, the *Northern Grain* case was about damages from the procedurally careless issuance of licenses to operate grain warehouses:

> The amended complaint, briefly stated, alleged that in August, 1912, licenses were issued to one A. E. Nichols under the so-called grain inspection act to operate grain warehouses at Adrian, Wilson Creek, and Wheeler for a period of one year from July 1, 1912; that said licenses were issued carelessly, knowingly, and negligently by the principal respondents without obtaining a bond from Nichols, and thereafter the said respondents permitted Nichols to openly conduct said warehouses as public warehouses without exacting from him a bond…

N. Grain & Warehouse Co. v. Holst, 95 Wash. 312, 313, 163 P. 775, 776 (1917), *overruled by Stenberg v. Pac. Power & Light Co.,* 104 Wash. 2d 710, 709 P.2d 793 (1985).

Neither *Stenberg v. Pac. Power & Light Co,* nor *Northern Grain* stand for a general denigration of legal distinctions. Apparently, Shawn is arguing in his Petition that *Stenberg* is to be used for the proposition that if there is ambiguity the longer statute of limitations should apply. See Pet. at p.20.

The problem for Shawn is that there is no "ambiguity" unless we transmute an obligee-debtor into an "obligor" (see above). There is no

rational basis for a deliberate confusion of two distinct statutory statuses (child support obligor and child support obligee).

Instead, Shennen asks the court to take this lesson from *Stenberg* (emphasis added):

> We return to the original understanding of the statutes: The catch-all provision serves as a limitation for any cases not fitting into the other limitation provisions. This serves the State's purpose to compel prompt litigation and not leave persons fearful of litigation unlimited by time.

Stenberg v. Pac. Power & Light Co., 104 Wash. 2d 710, 721, 709 P.2d 793, 799 (1985).

Application of *Stenberg v. Pac. Power & Light Co*: The two-year statute of limitations for seeking reimbursement for overpaid daycare "compels prompt litigation," and it is the proper statute of limitations to apply to RCW 26.19.080. Perhaps, someday, an out-of-country obligor will have an equitable bases to request tolling the two-year statute of limitations, but that hypothetical possibility can be handled under existing law, and that is no reason to oppressively stretch RCW 26.19.080 with a ten-year statute of limitations. Shawn could have engaged in "prompt litigation," and did not.

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B. *Seattle Prof'l Eng'g Employees Ass'n v. Boeing Co.*

Shawn turns to *Seattle Prof'l Eng'g* for this proposition (at p.17 of his Petition), "the two year statute of limitations could not be applied to a statutory right incorporated into an implied employment contract."

This case is so far afield as to have little relevance. However, to address Shawn's issue, in *Seattle Prof'l Eng'g* the State Supreme Court affirmed the trial court in finding that a three-year statute of limitations applied to the statutory scheme to reimbursing workers for unpaid work on an unjust enrichment basis:

> Finally, the parties disagree about the applicable statute of limitations for WMWA claims. The employees argue the three-year statute of limitations of RCW 4.16.080(2) applies. Boeing contends an action under the WMWA is subject to the two-year catch-all statute of limitations provided under RCW 4.16.130, citing *Cannon v. Miller,* 22 Wash.2d 227, 155 P.2d 500, 157 A.L.R. 530 (1945). In siding with the employees, the courts below held such a suit is governed by the three-year statute applicable to actions for "taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated[.]" RCW 4.16.080(2). *Accord Sorey v. Barton Oldsmobile,* 82 Wash.App. 800, 919 P.2d 1276 (1996), *review granted,* 131 Wash.2d 1001, 932 P.2d 643 (1997).

Seattle Prof'l Eng'g Employees Ass'n v. Boeing Co., 139 Wash. 2d 824, 836, 991 P.2d 1126, 1134, *opinion corrected on denial of reconsideration*, 1 P.3d 578 (Wash. 2000).

There is no relevance of this case, except that it is a case with a statute of limitations controversy. Recent cases over-ruling archaic cases in contract and tort matters, by applying current law and statutes, is more misleading than probative as to child support matters.

Child support obligee-obligor terms of statutory art should not be overthrown by reference to inapplicable cases. That Shawn does not like the distinctions between obligors/obligees v. debtors/creditors does not mean these settled distinctions should be disrupted.

Shawn "sat on his rights" until the point that Shennen was dying of cancer and until the point he would have to – per the 2009 Decree of Legal Separation and 2010 Decree Converting Separation to Dissolution -- provide to Shennen (or her trust for their son) her one-half of the net equity of the family home, in which Shawn was still living.

There is no legal or equitable reason to reward Shawn's dilatory behavior in particular, nor to change the incentives for the public in general.

V. CONCLUSION AND RELIEF REQUESTED: DENY REVIEW

While Shennen does not agree with every aspect of the Division Three opinion, it is a concise statement on issues of first impression, and review should be denied.

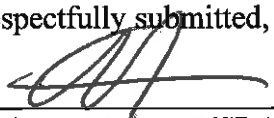
Shawn has not shown the bases for Review under RAP 13.4 apply.

There is no conflict between the Division Three decision and any State Supreme Court decision. RAP 13.4(1). There is no conflict with any other published appellate decision, as this is a case of first impression. RAP 13.4(2). The issue raised is not constitutional. RAP 13.4(3). While there is a public interest at stake as to daycare reimbursement, the Division Three decision competently and clearly addressed that concern, and the Division Three decision was consistent with the amicus briefing of the State Attorney General. RAP 13.4(4). There is no RAP 13.4 basis for accepting discretionary review. The court is asked to deny the petition for discretionary review.

Establishing the two-year statute of limitations for the elective option of a statutory action for reimbursement of overpaid daycare under RCW 26.19.080 is the correct decision by Division Three.

Clarity in the law, and justice in equity, is served by denying review, and by allowing the Division Three opinion to promptly become the law of the State of Washington.

Respectfully submitted, 4/30/20



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v.

Shawn Blackburn, Petitioner for Discretionary Review of Division III Decision

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DECLARATION OF SERVICE

I, Lori Mason, declare under penalty of perjury under the laws of the State of Washington, that on April 30, 2020, I provided, via electronic filing, a copy of the Answer of Shennen Blackburn's Estate, to the following:

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