Supreme Court No: 92328-1
Court of Appeals No: 45956-6-II

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

IN RE THE MARRIAGE OF:

PATRICIA MCCARTHY,
Respondent,

and

FEARGHAL MCCARTHY,
Appellant.

Appeal from the Superior Court of Clark County
Case No: 05-3-01349-1

AMENDED PETITION FOR REVIEW

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I. IDENTITY OF THE PETITIONER

The Petitioner, Fearghal McCarthy, designated as the Appellant in the Court of Appeals and the Respondent in the Superior Court, asks this Court to accept review of the Court of Appeals' decision referenced in Section II below.

II. COURT OF APPEALS DECISION

Petitioner seeks review of the Court of Appeals opinion filed on September 1, 2015, which is attached as Appendix A. In its decision, the Appeal Court nullified the application of certain statutes to stipulated child support orders entered in compliance with RCW 26.19.035. This nullification is contrary to the legislative intent "to increase voluntary child support settlements" declared in RCW 26.19.001, and will chill parental desires to voluntarily stipulate to child support orders that are fully compliant with RCW 26.19.035.

III. ISSUES PRESENTED FOR REVIEW

1. Does the Appeal Court's ruling unreasonably chill the legislative intent to "increase voluntary child support settlements" by nullifying i) the statutory prerequisites for modification and ii) the statutory constraints for adjustment, for stipulated child support orders entered in compliance with RCW 26.19.035? See RCW 26.19.001(3); RCW 26.09.170(1)(b); RCW 26.09.170(7).
2. Does the Appeal Court's ruling erode the statutory intent to "insure that child support orders are...commensurate with the parents' income(s)" by chilling parental desires to seek adjustment of stipulated child support orders, based on fears that stipulated orders now lack finality and are subject to modification outside the scope of an adjustment proceeding? See RCW 26.19.001.
3. Are written findings of fact required for modification of a stipulated child support order, including deviation modifications, in the same manner as is required for non-stipulated orders? RCW 26.19.035(2); RCW 26.19.075(2)&(3).

4. Should this Court's opinion in Pippins v. Jankelson, 110 Wn.2d 475, 754 P.2d 105 (1988), made prior to RCW 26.26.130(5) being repealed, be now properly interpreted in the context of the statutory intent to increase voluntary child support agreements by using the worksheets mandated by RCW 26.19.035?
5. Are children the real parties of interest in child support proceedings; do children have rights to timely entry of support orders pursuant to CONST. art. I, §10 and CONST. art. IV, §20; and does the court have a duty to act in the "bests interests of the children" in setting a commencement date of a child support order?
6. Did the Appeal Court abuse it discretion by using numbers in the modified order's worksheet that are contradicted by the undisputed substantial evidence?

IV. STATEMENT OF THE CASE

Fearghal and Patricia have two children. Fearghal is the custodial parent. On January 23, 2009, they entered a stipulated "Final Order of Child Support" (the "Final OCS").[1] CP 1-12. Both parties signed the Worksheets supporting the Final OCS under penalty of perjury; and Judge Poyfair signed the Worksheets as approved. CP 12. On January 29, 2010, they stipulated to a Decree of Dissolution that adopted the Final OCS as the post-decree child support order. CP 13-17.

After a contested proceeding, on 6/7/11 the trial court entered an order finding Patricia in contempt for non-payment of child support for "intentionally failed to comply with a lawful order of the court dated on January [23], 2009." CP 17-21; CP 18 ¶2.1. Patricia continued to be delinquent resulting in over $19,000 of arrears, equating to over 22 months of child support arrears as of 8/30/12. CP 198.

[1] Some relevant provisions of the Final OCS and its supporting Worksheets include: i) no deviation was ordered for Patricia's third biological child "EM", CP 3, CP 11; ii) a $230 monthly amount provided for "special expenses" consisting of educational and extracurricular activities, CP 9; and iii) the findings stated that "the parents expect both children to complete a post-secondary education, CP 4, ¶3.14; and that "support shall be paid until the children reached the age of 18 or for as long as they remained enrolled in high school or an accredited post-secondary school, whichever occur last." CP 4, ¶3.13.

On May 29, 2013, Fearghal filed a motion to adjust child support based on a change in the parties' incomes, citing the matter for hearing on June 5, 2013.[2] CP 29-35, CP 36. Patricia initially did not file the required worksheets, paystubs and financial declaration, filing an objection instead. CP 37-38. The matter was rescheduled and eventually heard on Oct 9, 2013. CP 106. After the hearing, Patricia filed a proposed order with a commencement date of Oct 1, 2013. CP 162. However, the commissioner mailed the parties a new modified support order with additional unexpected modifications. CP 172. This modified support order set a *prospective* commencement date of January 1, 2014. CP 173-186. Fearghal filed a motion for revision arguing various errors, including erroneous modification of the Final OCS and faulty numbers in the worksheets contradicted by the undisputed evidentiary facts. The revision court granted Fearghal's motion in part but affirmed the disputed modifications and worksheets; and entered a revised modification order (the "Modified Order"). CP 210-219. Fearghal appealed.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. Summary of Argument

The Appeal Court's ruling creates an issue of first impression. In the context of the legislative intent to "increas[e] voluntary settlements as a result of the greater predictability achieved by a uniform statewide child support schedule", RCW 26.19.001(3); should the statutory constraints for adjustment proceedings and the statutory prerequisites for modification be respected for stipulated child support orders that provide the standard support amount, are supported by approved worksheets, and are entered in full compliance with RCW 26.19.035? See RCW 26.09.170(7); RCW 26.09.170(1)(b). Put another way, does a worksheet that (i) is completed, judicially reviewed and signed pursuant to RCW 26.19.035(3)&(4), (ii)

[2] Since Judge Poyfair had retired, the motion was reassigned to a court commissioner.

calculates child support in the presumptive amount pursuant to the economic table in RCW 26.19.020, and (iii) is attached to a stipulated child support order, constitute clear evidence and create a presumption that, absent a deviation, the support amount in that stipulated child support order is both adequate and reasonable? According to the Appeal Court, the answer is no.

Prior to adoption of the Child Support Schedule in 1989, child support was based on factual determinations of the factors listed in former RCW 26.26.130(5). Because the legislature had not repealed RCW 26.26.130(5), the Supreme Court carved out a narrow equitable exception to the general rule that modification of child support orders required a "substantial change in circumstances". Pippins, 110 Wn.2d at 480. This exception was for stipulated orders where the support amount was not reasonable due to presumed absence of judicial consideration of the factors listed in RCW 26.26.130(5) in uncontested proceedings. Pippins, 480-481. One year later, the Child Support Schedule was codified in RCW 26.19 and the legislature repealed RCW 26.26.130(5).

Instead of requiring findings and judicial consideration of the factors listed in former RCW 26.26.130(5), the legislature now requires child support to be determined based on approved worksheets that standardize support calculations, so as to further the legislative intent to increase voluntary child support agreements. RCW 26.19.035. RCW 26.19.001(3). The legislature also codified the general rule that child support orders can only be modified upon a "substantial change in circumstances". RCW 26.09.170(1)(b). The only exceptions to this rule are those listed in RCW 26.09.170(6); there is no statutory exception for stipulated child support orders. On the contrary, the legislative intended RCW 26.09.170(1)(b) to apply to stipulated orders that provide the standard support amount based on approved worksheets entered pursuant to RCW 26.19.035.

In Schumacher v. Watson, 100 Wn. App, 208, 997 P.2d 399 (2000), the trial court made findings that a stipulated support order was "unwieldy and unpredictable" and "created severe economic hardship" by *using a method other than the Child Support Schedule and its mandatory worksheets* to calculate the support amount. Schumacher, at 212-213. The Court relied on Pippins, 110 Wash.2d, at 478, to hold that the support order could be modified as an equitable exception, absent the substantial change of circumstances required by RCW 26.09.170(1)(b), based on these findings. Id., at 212. Thus, the gravamen of this equitable exception rested upon the trial court's findings that the stipulated support order did not comply with RCW 26.19.035, not merely that the support order was a stipulated order.

Here, the Appeal Court's ruling expands the narrow exception to swallow the general rule. The Appeal Court abrogates the modification requirement of a "substantial change in circumstances" set forth in RCW 26.09.170(1)(b) for *all* support orders that are "not the product of an uncontested proceeding": whether or not a stipulated support order is "statutorily compliant" is no longer relevant. See Court of Appeals Opinion ("COA Opinion"), pg 5 n.5. Thus, the exception has been expanded from an equitable remedy for statutorily non-compliant support orders to a sweeping administrative nullification of all stipulated support orders. This is in direct conflict with the rationale in the seminal Pippins decision.[3]

No published cases exist on this topic besides Pippins and Schumacher, cases from 27 and 15 years ago respectively. In this case, the Appeal Court ruled that *all* stipulated child support orders can be modified without the statutory prerequisite of a substantial change of circumstances, without the necessity for findings of fact to

[3] "The language of the statute is mandatory and it does not matter whether the court itself is determining the [child support] amount or whether the amount is stipulated by the parties"; what matters is that "original support order complied with the child support statute" in accepting the stipulated child support amount. Pippins, at 480-481.

support modification, and regardless of a stipulated order being supported by worksheets filed in compliance with RCW 26.19.035. This is a major expansion of the narrow exception based on equitable principles permitted in Pippins and Schumacher. This expansion fails to recognize that worksheets filed in compliance with RCW 26.19.035 now replace the factual analysis required under former RCW 26.26.130(5), and are purposed to further the statutory intent to increase voluntary child support agreements. The Appeal Court's ruling penalizes parents who reach voluntary support settlements using the approved statutory worksheets to calculate the child support amount pursuant to RCW 26.19.035.

Because the Pippins decision was 27 years ago, prior to adoption of the Child Support Schedule, review now is warranted. This issue goes to the heart of the statutory intent; it would detrimental to this intent if it took another 15 years for this issue to be resolved in a published opinion.. Acceptance of review will benefit the fifty thousand parents in Washington who divorce annually, by encouraging these parents to enter into voluntary child support agreements without fear that their voluntary agreements lack the same finality as contested orders, merely because they did not burden the court with unnecessary contested proceedings.

2. The decision of the Court of Appeals is in conflict with decisions of the Supreme Court. RAP 13.4(b)(1).

a) This Petition presents the Court with an opportunity to interpret its 1988 decision in Pippins in the context of RCW 26.19.035, which has replaced former RCW 26.26.130(5) as the sole basis for determining child support..

In Pippins v. Jankelson, 110 Wn.2d 475, this Court held that:

> "[I]n any action in which child support is an issue, the courts are required to make an independent determination of the reasonableness of the amount based on the factors listed in RCW 26.26.130(5). When a court fails to make this determination, a subsequent court exercising its traditional equitable powers may evaluate the reasonableness of the original amount and modify child support payments accordingly." Pippins, at 480-481.

In making this holding, the Court explained that:

> "Since chapter 275 neither repeals nor modifies RCW 26.26.130(5), it appears that the Legislature intends that the courts make an independent determination of the reasonableness of the support amount calculated from the schedule based upon the factors listed in RCW 26.26.130(5)." Pippins, at 481, note 2.

In 1989, a year later, the Legislature amended RCW 26.26.130(5) providing that child support shall be "determined pursuant to the schedule and standards adopted under RCW 26.19.040 [now repealed]", abandoning the factors listed under former RCW 26.26.130(5) for determining child support. Laws of 1989, ch.360, §18(5). The Legislature now requires that a completed Worksheet be judicially reviewed and filed with the child support order "for the adequacy of the amount of support ordered." RCW 26.19.035(3)&(4). Simply put, judicial review of Worksheets pursuant to RCW 26.19.035(4) now replaces the review and analysis of factors required under former RCW 26.26.130(5) for determining child support.

Here, the Appeal Court failed to interpret Pippins in accordance with the statutory mandate for completion and judicial review of approved worksheets set forth in RCW 26.19.035, resulting in legal error. Thus, there is a pressing need for the Supreme Court to interpret its holding in Pippins in the context of RCW 26.19.035, which now is the sole basis for determining child support since the Legislature's abandonment of the factors listed in former RCW 26.26.130(5).

b) The Appeal Court misinterprets Pippins to conflict with the Supreme Court

(1) Pippins held that for stipulated orders, a presumption existed that the court did not independently determine the reasonableness of the support amount. Pippins, 110 Wn.2d at 481. But, the Court stated two qualifiers: i) its holding was specifically based on the fact that the Legislature had *not* repealed or modified RCW 26.26.130(5) requiring courts to consider the factors listed therein; Id, at 481, n.2; and ii) "*this presumption can of course be overcome with clear evidence to the*

contrary." Id., at 482. In affirming modification here, the Court found "Fearghal has not presented evidence to rebut this presumption" that the support amount in the Final OCS was not judicially reviewed for reasonableness. COA Opinion, page 4. This conclusion conflicts with Pippins because it ignores the existence of completed Worksheets judicially signed as reviewed, and attached to the Final OCS in full compliance with RCW 26.19.035. CP 1-12.

Since 1989, approved worksheets completed and signed under penalty of perjury by the parties, reviewed and signed by a judge, have been the sole method for determining the standard child support calculation, replacing fact determinations required by former RCW 26.26.130(5). Completion and review of the Worksheets is mandated by RCW 26.19.035(3)-(4). The information contained in the approved worksheet constitutes findings of fact for the child support order. In re Marriage of Daubert, 124 Wn. App. 483, 492, 99 P.3d 401 (2004). Thus, entry of completed and judicially signed worksheets in compliance with RCW 26.19.035 overcomes any presumption that the court did not review the support amount for adequacy. Such is the case here where Worksheets signed by both parties, reviewed and signed by Judge Poyfair, were attached to the Final OCS. CP 8-12. These Worksheets overcome any presumption that the support amount in the Final OCS was not reasonable or was not reviewed by Judge Poyfair for adequacy of the support amount.

Besides the judicially signed Worksheets, alternative evidence exists. The trial court had a second opportunity to independently examine the Final OCS and the adequacy of the support amount when it found Patricia in contempt of the Final OCS for "intentionally fail[ing] to comply with a *lawful* order of the court." CP 18, ¶2.1. Because this was a contested proceeding, the court's independent examination is presumed. Pippins, at 481. This constitutes additional evidence that the trial court reviewed the Final OCS for the adequacy of the support amount.

(2) The Pippins Court conditioned a subsequent court's modification of a child support order absent a substantial change in circumstances on two prerequisites: i) the court may only make such a modification on equitable grounds when the original support amount is not determined in accordance with the statute; Pippins, at 481; and ii) the court *must first* "evaluate the reasonableness of the original support amount." Id. Thus, any modification requires the court to enter written *findings* that that original support amount was inadequate.

Here, the Appeal Court conflicts with Pippins: (1) the trial court did not "evaluate the reasonableness of the original support amount" nor did it make any findings to that effect; (2) the Court affirmed modification not on equitable grounds arising from a "statutorily non-complaint prior support order", but on administrative grounds that the Final OCS was "not the product of an uncontested proceeding." COA Opinion, page 4-5, note 5; and (3) the Court ignores the judicially signed worksheets evidencing judicial review of the adequacy of the support amount in the Final OCS, pursuant to RCW 26.19.035(4). Thus, the Appeal Court adopts too shallow a interpretation of Pippins that is blind to the purpose of permitting an exception to RCW 26.09.170(1)(b), which is to permit an equitable remedy for when *any* child support order *fails to provide a reasonable support amount.* See Pippins, at 480-481, ("it does not matter whether the court itself is determining the amount or whether the amount is stipulated by the parties."). Thus, the determinative factor as to whether a child support order can be modified absent a substantial change in circumstances is not whether the order is the result of an uncontested proceeding; but *rather on whether a finding has been made that the original support order failed to provide a reasonable support amount.* Id.

In Pippins, the commissioner made several findings of fact including that the support amount was not based on the reasonable needs of the child. Id. 477-

478. Similarly, in Schumacher v. Watson, 100 Wn. App, 208, the modification court also made findings that the previous support order created severe economic hardship, was unwieldy and unpredictable, and did not meet the child's financial needs. Id. at 211. Here, the trial court made no findings whatsoever that the Final OCS provided an inadequate support amount or was otherwise statutorily non-compliant. Thus, the Appeal Court's opinion conflicts with Pippins.

c) *The Appeal Court's ruling conflicts with the Supreme Court's holding in Sacco that the standard calculation is presumptively correct.*

The standard calculation of child support is calculated pursuant to the economic table. RCW 26.19.020. "The standard calculation is presumptively correct." In re Marriage of Sacco, 114 Wn.2d 1, 4, 784 P.2d 1266 (1990).

Here, the Worksheets attached to the Final OCS calculated the standard child support amount pursuant to the economic table, which was *presumptive* for combined monthly incomes up to twelve thousand dollars when the decree was entered. RCW 26.19.020. The Final OCS did not order any deviation. Because the Final OCS ordered the *presumptive* amount of child support, this presumptive amount is *presumed* to provide an adequate support amount. The Appeal Court failed to recognize that the Final OCS and its supporting worksheets ordered the presumptively correct amount of child support. This conflicts with Sacco.

d) *The Appeal Court's opinion conflicts with the legislative intent to increase voluntary settlements by utilizing a uniform statewide child support schedule.*

The Appeal Court's opinion conflicts with the Supreme Court's view of the statutory purpose of RCW 26.19 set forth in In re Marriage of Sacco, 114 Wn.2d 1.

> "This statute aimed to increase the equity and adequacy of child support orders. RCW 26.19.001(1),(2). It also sought to reduce 'the adversarial nature' of child support proceedings 'by increasing *voluntary settlements* as a result of the greater predictability achieved by a uniform statewide child support schedule. RCW 26.19.001(3).'" "The thrust of the statute is to require the court to set forth the basis for its calculations in order for subsequent courts to

> determine precisely what the underlying facts are and how the trial court reached its decision. This process should promote more predictability, more consistent awards, and, hence, more *voluntary settlements*." Sacco, at 3-4.

According to the Appeal Court, stipulated orders entered in compliance with RCW 26.19.035 do not enjoy the same finality as non-stipulated orders; and can now be modified absent a finding of a substantial change in circumstances. COA Opinion 4-5, citing Schumacher., at 313. But Schumacher, is inapposite; there the original child support order wasn't based on worksheets that complied with RCW 26.19.035. To hold that all stipulated child support orders lack finality and are subject to open-ended modification without any substantial change in circumstances is contrary to the statutory intent; chilling parental desires to enter into voluntary child support agreements; and will chill the statutory intent to seek adjustment to keep "child support commensurate with parents' incomes", by discouraging parents from seeking adjustment based on fears that stipulated orders will be modified with broad unanticipated changes outside the scope of an adjustment proceeding. See RCW 26.19.001; Scanlon, 109 Wn. App. at 173-174, *infra.*

The statutory mandate to use approved worksheets furthers the statutory intent to promote voluntary settlements that provide the standard support amount, which is presumed to be correct. Sacco, at 3-4. Thus, voluntary settlements with supporting worksheets filed in compliance with RCW 26.19.035 should only be modifiable upon a finding of a substantial change of circumstances pursuant to RCW 26.09.170(1)(b). By depriving all voluntary support settlements of the finality provided by the statutory constraints of adjustment proceedings and statutory prerequisites for modification, the COA Opinion directly conflicts with Sacco.

e) The Appeal Court's opinion abrogates the finality of stipulated child support orders within the constraints of an adjustment proceeding, by affirming modification absent any written findings of fact to support modification.

A court may reopen a final judgment only when a statute or court rule

specifically authorizes it to do so, and then may only act within the constraints of that authority. In re Marriage of Shoemaker, 128 Wn.2d 116, 120, 904 P.2d 1150 (1995). Modification is precluded absent written findings to support modification. In re Marriage of Scanlon, at 174; citing RCW 26.19.035(2). Modification is also precluded absent findings as the statutory factors stated in RCW 26.09.170(1)(b) and RCW 26.09.170(6). An adjustment proceeding is much more limited in scope than a modification action; and the constraints of an adjustment proceeding must be respected. See Scanlon, at 173; RCW 26.09.170(7). Here, the COA Opinion conflicts with Shoemaker, because the trial court disregarded the finality of the Final OCS by ignoring the constraints of an adjustment proceeding and modifying the Final OCS without any statutory authority to do so.

The Appeal Court opines that modification may be affirmed because the Final OCS works a "severe economic hardship" on Fearghal and the children; but this is mere speculation as nowhere in his adjustment motion or declarations does Fearghal use the term "*severe* economic hardship", nor did the trial court make any *written findings* as to "severe economic hardship."[4] See COA Opinion, pg 5. See RCW 26.09.170(6)(a); Scanlon, at 174. In fact, the trial court's modifications are totally incongruent with the existence of any "severe economic hardship" because the court imposed modifications financially detrimental to Fearghal such as i) a downward deviation to the standard support amount; ii) reallocating the tax exemptions from Fearghal to Patricia; iii) removing the $230 monthly amount for the children's educational and extracurricular expenses. Absent written findings to support modification, the Appeal Court's affirmation of modification outside the constraints of an adjustment proceeding conflicts with Shoemaker.

[4] Patricia's $19,000 delinquency in child support caused some hardship, but not severe hardship. Fearghal did not claim that the Final OCS caused hardship, only that his income had declined.

Nor were any written findings of fact entered to support a deviation from the standard child support amount. The Appeal Court's affirmation of a deviation for Patricia's third child absent written findings of fact again conflicts with Supreme Court decisions. The court must make written findings of fact to support any deviation; the "whole family formula" and the court record do not constitute findings. In re Marriage of Booth, 114 Wn.2d 772, 777, 791 P.2d 519 (1990). See In re Marriage of Choate, 143 Wn. App. 235, 242, 177 P.3d 175 (2008); In re Marriage of McCausland, 159 Wn.2d 607, 620, 152 P.3d 1013 (2007), (only written findings of fact demonstrate that a trial court properly exercises its discretion, cursory findings and the trial record cannot substitute for written findings of fact in child support proceedings); RCW 26.19.075(3).

3. The decision of the Court of Appeals is in conflict with other decisions of the Court of Appeals. RAP 13.4(b)(2)

a) Absent written findings by the trial court, modification requires reversal.

Full modification of a child support order "may only be sustained under certain prescribed circumstances" set forth in RCW 26.09.170. In re Marriage of Scanlon, 109 Wn. App. 167, 173, 34 P.3d 877 (2001). These circumstances consist of: i) a substantial change of circumstances, RCW 26.09.170(1)(b); or ii) those limited circumstances set forth in RCW 26.09.170(6). Any failure by a trial court to "enter any findings of fact or conclusions of law regarding change circumstances to support a modification... requires reversal and remand for entry of findings." Scanlon, at 174, citing CR 52(a)(2)(B). In re Marriage of Stern, 68 Wn. App. 922, 926-27, 846 P.2d 1387 (1993). Here, the court made no written findings whatsoever to support modification. Thus, the Appeal Court's ruling conflicts with Scanlon and Stern because no findings were entered.

RCW 26.19.075(3) requires written findings for any deviation. The statute

"unequivocally requires written findings of fact to support any deviation and a consideration of the total circumstances of both households." Choate, 143 Wn. App. at 242; RCW 26.19.075(2). "Although cursory findings of fact and the trial record might appear to justify [a deviation], only the entry of written findings of fact demonstrate that the trial court *properly exercised its discretion* in making the award." Id., citing McCausland, 159 Wn.2d at 616. The trial court failed to make any findings evidencing consideration of the circumstances of both households. CP 223, CP 212. In direct conflict with Choate and McCausland, the Appeal Court excused the absence of written findings to support deviation by "presume[ing] that the trial court considered all evidence" instead. COA Opinion, pg 6.

b) No uncontemplated change in circumstances supports a deviation modification.

"Deviation from the standard support obligation remains the exception to the rule and should be used only where it would be inequitable not to do so." In re Marriage of Burch, 81 Wn. App. 756, 760, 916 P.2d 443 (1996). In Burch, the appeal court reversed a deviation granted on modification because the husband's children from another relationship were born *prior* to entry of the divorce decree.

> "It is well settled that support orders may be modified only upon an uncontemplated change of circumstances occurring since the former decree. In our view, a deviation should likewise be based upon circumstances not existing or contemplated at the time of the prior order." Burch, at 761.

Here, the Final OCS and its attached Worksheets evidence Patricia's third biological child "EM" was born *prior* to entry of the divorce decree; and no deviation was requested. CP 11, CP3. Because the Final OCS did not provide a deviation for "EM", no uncomtemplated change of circumstances exists to warrant a deviation in the Modified Order. Thus, Appeal Court's ruling conflicts with Burch. The Appeal Court relies on Choate, 143 Wn. App. at 241-242. COA Opinion, pg 6. But Choate is inapposite because, there, the child for which the deviation was granted was borne *after* entry of the divorce decree.

c) *Because the statutory procedures for modification were not followed, Fearghal was denied due process causing prejudice.*

An adjustment action is more limited in scope than a petition for modification. Scanlon, 109 Wn. App. at 173. A modification action is commenced by service of a summons and petition and it is resolved by trial. Id., citing RCW 26.09.175. A modification is "significant in nature and anticipates making substantial changes and/or additions to the original order of support". Id.

The proceeding before the court was an adjustment proceeding. The court failed to follow the statutory modification procedures set forth in RCW 26.09.175. The Appeal Court mistakenly states Fearghal did not explain how he was prejudiced. COA Opinion, pg 3. Fearghal did in fact explain.[5] Fearghal was denied notice and opportunity to prepare argument for modification issues decided sua sponte at the adjustment hearing and in the commissioner's post-hearing letter. "Notice and the opportunity to be heard on matters which materially affect a litigant's rights are essential elements of due process that may not be disregarded." In re Marriage of Mahalingam, 21 Wn. App. 228, 584 P.2d 971 (1978). Lack of notice denied Fearghal the opportunity to present evidence; e.g. evidence as to special expenses related to the children's educational and extracurricular activities, comparison of the parties' health insurance coverage, and more. Fearghal was denied the opportunity to engage in discovery regarding Patricia's household income and expenses as these were relevant to a deviation modification; and he would have conducted discovery given Patricia's history of perjury, false testimony and forgery of evidentiary documents.[6]

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[5] See Appellant's Opening Brief, page 27; Appellant's Reply Brief, page 11.

[6] The parties' stipulation to the Final OCS, parenting plan and Decree of Dissolution is noteworthy insofar as it was preceded by three-plus years of contested proceedings where Patricia was held in contempt of court in excess of 30 times, many which were related to evidentiary issues such as perjury, forging evidentiary documents, lying to the court, refusing to provide discovery, tampering with witnesses, and more. Appellants' Reply Brief, pg 3; Appellants Reply Brief, Appendix A; CP 18, 255, 331, 351-352, 357-359, 389-390.

The trial court's abrogation of the statutory procedures for modification set forth in RCW 26.09.175 denied Fearghal due process, causing prejudice. The Appeal Court's affirmation of modification despite this prejudice conflicts with Scanlon, which requires the statutory modification procedures to be respected.

d) Substantial evidence does not support certain amounts stated in the worksheets supporting the Modified Order.

Substantial evidence must support the trial court's factual findings. In re Parentage of Goude, 152 Wn. App. 784, 790, 219 P.3d 717 (2009). Substantial evidence is evidence sufficient to persuade a fair- minded person of the truth of the declared premise. Goude, 152 Wn. App. at 790.

(1) Patricia's Health Insurance Costs: Only the children's portion of a health insurance premium paid by a parent should be included in the Worksheets. See Scanlon, at 175, ("The credit may not include...any portion of premium not covering the children at issue."); In re Marriage of Goodell, 130 Wn. App. 381, 392, 122 P.3d 929 (2005), ("When determining an insurance premium amount, do not include the portion of the premium paid by the employer or other third party and/or the portion of the premium that covers the parent or other household members."); Wash. Child Support Schedule, Page 7, Line 10a. Patricia's payroll stubs and "health insurance premium chart" evidences Patricia's total monthly health insurance cost as $467 of which i) $282 is attributable to *both* Patricia and her spouse; and ii) the $185 balance is attributable to three children consisting of "EM" and the parties' two children the subject of the support order. CP 74, CP 108. Two thirds of the $185 amount is attributable to the parties' two children, or $123. Fearghal agrees. Thus, the substantial evidence is that monthly cost of health insurance for the children in $123, not $333 per month. See COA Opinion, pg 11.

(2) Fearghal's Health Insurance Costs: In general, both parents are required to provide health insurance for a child subject to a support order. RCW

26.09.105(1). If both parents have health insurance coverage, the court can order one parent to provide health insurance coverage only following a determination of which health insurance coverage is better, after considering the needs of the child. RCW 26.09.105(4)(b). The court made no such findings here, declining to consider which party had the better health insurance policy. Thus, both parents' health insurance costs for the children are allowable and should be included in the worksheets pursuant to the Wash. Child Support Schedule, Page 7, Line 10a.

(3) Patricia's Federal Income and FICA Taxes: After Patricia was ordered to produce her payroll information, Fearghal filed an updated worksheet stating Patricia's FICA taxes as $506 and her federal income taxes as zero.[7] CP 121. This federal tax amount of zero reflected Patricia's prior year tax refund of $7,041. CP 65. It is undisputed that Patricia's payroll deductions for her federal income taxes and FICA taxes equate to $278 and $506 per month respectively. CP 110; Fearghal's Opening Brief, pgs 10-11. Despite this substantial undisputed evidence, the worksheets attached to the Modified Order show $689 for federal income taxes and $542 for FICA taxes. The Appeal Court fails to address: (1) the error that the federal tax amount of $689 in the worksheets is contradicted by the undisputed amount of $278 in Patricia's paystubs; and (2) the instructions in the Wash. Child Support Schedule, page 6, Line 2a. require the federal tax amount stated in the worksheets to reflect Patricia's prior year tax refund of $7,041.

(4) Special Expenses for the educational and extracurricular activities: An amount of $230 was included in the Final OCS for these expenses. CP 9. Fearghal states $270 in his proposed worksheet. CP 121. Despite this, the worksheets

[7] Worksheets must be filed with a motion for adjustment. RCW 26.09.170(7)(b). Fearghal did not invite error by filing the worksheets with his motion for adjustment estimating Patricia's payroll information; rather he was complying with the RCW 26.09.170(7)(b). See COA Opinion, page 10-11. On revision, Fearghal argued that Patricia's paystubs evidenced i) a deduction for federal taxes of $278 per month; and ii) a deduction for FICA taxes of $506 per month. CP 204.

supporting the Modified Order state an amount of zero. CP 221. No substantial evidence supports the finding that expenses for the children's educational and extracurricular activities have evaporated to zero. If anything these expenses have increased since 2009 as the children have gotten older. Eliminating these special expenses for the children is contrary to their "bests interests" as these expenses are necessary for their ongoing educational and extracurricular development.

e) It is well established that child support orders may provide for post-majority and post-secondary educational support for minor children

The Final OCS language ordering post-majority support is clear and unambiguous: postsecondary support was not reserved. The Final OCS was compliant with RCW 26.19.090(1) because post-secondary educational expenses are advisory.[8] When post-majority support is affirmatively ordered in a support order *without reservation*, modification absent a substantial change of circumstances is error. No written findings support this modification.

4. The petition raises a significant question of law under the Constitution of the State. RAP 13.4(b)(3).

Do children have constitutional rights to adjudication of child support proceedings without unnecessary delay or within 90 days, so that adequate child support is timely accrued in compliance with the legislative intent? CONST. art. I, §10; CONST. art. IV, §20; RCW 26.19.001.

When child support proceedings are unduly delayed, the remedy is to make the commencement date retroactive to an earlier date. In re Marriage of Oblizalo, 54 Wn. App. 800, 766 P.2d 166 (1989), the appellate court upheld the remedy of making commencement date of a new order retroactive to the date a petition was

[8] In re Marriage of Daubert, 124 Wn. App. 483, at 505, the Court specifically held for purposes of deciding post-secondary support, the Court may consider *both* the basic needs of the child (i.e. standard support per the economic table) and postsecondary educational support, because the Child Support Schedule is advisory. This is not a "double payment". The child remains dependent but has added post-secondary educational expenses.

filed when proceedings were delayed, explaining support belongs to the children.

> "Moreover, the question of which party occasioned delay is irrelevant. Child support belongs to the children, not the parent. The custodial parent receives the support only as a trustee for the children. Thus, the **children** are the real parties in interest; they have not caused any delay." Oblizalo at 806, citing In re Marriage of Pippins, 46 Wn. App. 805, 808, 732 P.2d 1005 (1987).

Children have no mechanism to protect their constitutional rights to have child support decisions made within 90 days.[9] Instead, children rely on the court's discretion. The court's discretion is governed by two factors: i) its duty to protect the interests of minors; and ii) its duty to make determinations based on the children's best interests. See In Re Guardianship of Karan, 110 Wn. App. 76, 85, 38 P.3d 396 (2002); In re Marriage of Mattson, 95 Wn. App. 592, 599-600, 976 P.2d 157 (1999), ("The child support statutes are intended to support the best interests of the child."); RCW 26.09.002, ("The child's best interests is the standard upon which the court shall make its determinations.").

Children are entitled to adequate support on a timely basis regardless of whether parents are dilatory. Parental agreements to waive child support obligations violate public policy. In re Marriage of Pippins, 46 Wn. App. 805, at 808. Nor can parents diminish their child support obligations by voluntarily unemployment. In re Marriage of Shellenberger, 80 Wn. App. 71, 81, 906 P.2d 968 (1995). Likewise, delays in proceedings caused by parents should not be imputed to children and the timely commencement of newly adjusted or modified support orders.

The legislative intent of the Child Support Schedule is: "to insure that child support orders are adequate to meet a child's basic needs and to provide additional child support commensurate with the parents' income, resources, and standard of living." RCW 26.19.001. Ensuring child support orders have a commencement

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[9] Even though Fearghal did not raise this issue in the trial court, the Court is asked to consider this issue because children, not parents, are the real parties of interest in child support proceedings.

date not longer than ninety days from when a child support motion is filed furthers the legislative intent. Prospective commencement dates seven months after a motion is filed, as is the case here, should not be favored.

5. The Petition involves an issue of substantial public interest. RAP 13.4(b)(4).

Approximately 25,000 couples are divorced in Washington State every year. A significant portion of these dissolution actions involve stipulated orders of child support arising from voluntary agreements. The Appeal Court's opinion in this case undermines the finality of stipulated child support orders entered pursuant to RCW 26.19.035. Yet, finality best serves the emotional and financial interests affected by family law matters. In re Parentage of Jannot, 149 Wn.2d 123, 127, 65 P.3d 664 (2003). So do voluntary child support agreements based on the approved worksheets required by RCW 26.19.035. The public interest is served by this Court accepting review of this Petition and ruling as to whether the statutory requirement for modification as set forth in RCW 26.09.170(1)(b) is nullified for stipulated child support orders entered in accordance with RCW 26.19.035.

VI. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests the Court to accept this Petition for Review. Petitioner requests remand for: i) findings consistent with this Court's opinion; and ii) correction of worksheets.

RESPECTFULLY SUBMITTED ON THIS 5th day of October, 2015.

Fearghal Mc Carthy

Fearghal Mc Carthy,
Appellant, Pro se

APPENDIX A

Unpublished Opinion of the Court of Appeals
dated September 1, 2015

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In Re The Marriage of: PATRICIA McCARTHY, Respondent, v. FEARGHAL McCARTHY, Appellant.	No. 45956-6-II UNPUBLISHED OPINION

SUTTON, J. — Fearghal McCarthy appeals the trial court's order modifying the 2009 order of child support that he and Patricia McCarthy agreed to in their dissolution action.[1] Fearghal argues that the trial court erred by (1) modifying the original child support order when he petitioned for an adjustment, (2) miscalculating the child support, and (3) using an incorrect retroactive commencement date for the new child support amount. We hold that the trial court did not abuse its discretion. Therefore, we affirm the trial court's modification of the child support order.

FACTS

Fearghal and Patricia have two children. In June 2009, as part of their dissolution action, they agreed to a child support order requiring Patricia to transfer $780 to Fearghal in child support each month until the older child changed age brackets in 2011, when the amount would increase to $857. The trial court entered the order and approved the child support worksheet.

[1] We refer to the parties by their first names for clarity. We intend no disrespect.

On May 29, 2013, Fearghal filed a motion to adjust child support due to a change in the parties' incomes. The court commissioner entered an order of adjustment of child support and order of child support on December 11, which increased the transfer payment from Patricia to Fearghal to $1003 per month and modified several other provisions. Fearghal then moved to revise the order, arguing that the court commissioner had erred in a number of ways, including imputing income to him greater than his actual earnings and erroneously modifying the 2009 child support order. On January 31, 2014, the trial court granted Fearghal's motion in part to reflect his "actual income." Clerk's Papers (CP) at 209. The final child support order increased Patricia's required transfer payment to $1,107 per month and affirmed the modifications that Fearghal claimed were erroneous. The trial court ordered a retroactive start date of January 1, 2014.[2] Fearghal appeals.

ANALYSIS

We review claims of error on a child support order for abuse of discretion.[3] *In re Marriage of Choate*, 143 Wn. App. 235, 240, 177 P.3d 175 (2008). A trial court abuses its discretion when

[2] On January 31, 2014, the trial court entered two orders that Fearghal now appeals, (1) "Order RE Motion for Modif[ication]/Adjustment of Order of Child Support" and (2) "Final Order of Child Support (Revised)." CP at 209-10. To distinguish between the 2009 child support order and the 2014 orders, we refer to these two 2014 orders collectively as the "modification of child support order."

[3] Fearghal and Patricia dispute the proper standard of review. Fearghal argues that we should review his claims of error de novo because we have only documentary evidence to consider and the issues he raises are questions of law, which we review de novo. Because Fearghal and Patricia dispute issues of fact on appeal (and did so below as well), Fearghal is incorrect that this case presents pure questions of law. Thus, the proper standard of review is abuse of discretion. *See In re Marriage of Langham*, 153 Wn.2d 553, 559, 106 P.3d 212 (2005) (de novo review is appropriate only where the trial court relied solely on documentary evidence and credibility is not an issue because the parties do not dispute underlying facts).

the decision is manifestly unreasonable or rests on untenable grounds or reasons. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). We give deference to a trial court's domestic relations decisions because "'the emotional and financial interests affected by such decisions are best served by finality'" and de novo review may encourage appeals. *In re Parentage of Jannot*, 149 Wn.2d 123, 127, 65 P.3d 664 (2003) (quoting *In re Parentage of Jannot*, 110 Wn. App. 16, 21, 37 P.3d 1265 (2002)). The party asserting error holds the burden of demonstrating that the trial court abused its discretion. *In re Marriage of Schumacher*, 100 Wn. App. 208, 211, 997 P.2d 399 (2000).

I. THE TRIAL COURT DID NOT ERR IN MODIFYING THE 2009 ORDER OF CHILD SUPPORT

Fearghal argues that the trial court erred in modifying multiple provisions of the 2009 child support order. He alleges the following errors: (1) the downward deviation from Patricia's standard child support payment for a child from another relationship, (2) the reallocation of the federal tax exemption from Fearghal to Patricia, and (3) the modification of several of the postsecondary educational provisions. He argues that the trial court incorrectly changed these provisions because he moved for a child support adjustment and not for a child support modification and the trial court did not make a finding of a "substantial change of circumstances" as required to modify a child support order in most cases.[4] RCW 26.09.170(1). On review, we hold that the trial court's modifications of the 2009 child support order were not erroneous.

[4] Fearghal also argues that these modifications prejudiced him by violating his due process rights, including his ability to conduct discovery. Fearghal does not explain what further discovery he could have done or what evidence he would have submitted but could not due to lack of discovery. Fearghal cannot demonstrate any prejudice simply because he was not served with a summons, the only procedural difference between modification and adjustment proceedings. RCW 26.09.170(7)(a)-(b); RCW 26.09.175.

A trial court's adjustment of a child support order and its modification of a child support order follow two different statutory processes. A party may initiate an adjustment proceeding based upon a change in income or change in the economic table in chapter 26.19 RCW by filing a motion and child support worksheets, without a showing of a substantially changed circumstances, if 24 months have passed from the entry of the previous child support order. RCW 26.09.170(7)(a)-(b). A modification proceeding, in contrast, generally requires the moving party to demonstrate a substantial change of circumstances before the trial court may modify the previous child support order, and to initiate the proceeding, the party must serve on the opposing party a summons and a petition along with its proposed child support worksheets. RCW 26.09.170(1); RCW 26.09.175.

When a trial court modifies a child support order without finding a substantial change in circumstances, we must reverse and remand for entry of findings. *In re Marriage of Scanlon*, 109 Wn. App. 167, 174, 34 P.3d 877 (2001). But this general rule requiring reversal is inapplicable when the first order of child support was not the product of a fully contested hearing where the trial court independently examined the evidence before entering its order. *Schumacher*, 100 Wn. App. at 213. Where the parties come to their own agreement, we presume that the trial court did not examine the evidence, and the party arguing against the modified order must overcome the presumption with clear evidence. *Schumacher*, 100 Wn. App. at 213. Fearghal has not presented evidence to overcome this presumption. Thus, the trial court need not have found a substantial

change of circumstances because the 2009 child support order was the product of uncontested proceedings.[5] *Schumacher*, 100 Wn. App. at 313.

Washington courts have general equitable power to modify "*any order* pertaining to child support payments when the child's needs and parents' financial ability so require." *Schumacher*, 100 Wn. App. at 213 (emphasis added). Under the modification statute, a trial court may modify a child support order without a showing of a substantial change of circumstances if the original order works a severe economic hardship on either party or the child. RCW 26.09.170(6)(a). This is precisely the theory Fearghal argued in his motion to adjust. Because he faced financial hardship that impacted the children, he argued that he needed an increase in Patricia's child support obligation. Additionally, Fearghal's proposed order of child support modified the 2009 support order in several respects. The trial court appropriately modified the 2009 child support order pursuant to RCW 26.09.170(6)(a) based upon Fearghal's asserted financial hardship to him and the children.

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[5] Fearghal attempts to distinguish *Schumacher* and *Pippins v. Jankelson*, 110 Wn.2d 475, 754 P.2d 105 (1988), the case that *Schumacher* relies on. He attempts to distinguish *Pippins* from this case because there the lower court found that the original child support order was not based upon the reasonable needs of the child. *Pippins*, 110 Wn.2d at 477. Notably, this court did not characterize that finding as a substantial change in circumstances finding, which is the error Fearghal claims the trial court made here. Thus, that distinguishing characteristic does not assist Fearghal's argument. Further, contrary to Fearghal's suggestion, the holdings in *Schumacher* and *Pippins* were not based on a "statutorily non-compliant prior support order." Reply Br. of Appellant at 9. These cases were premised on the fact that the original child support order was not the product of an uncontested proceeding. *Pippins*, 110 Wn.2d at 481-82; *Schumacher*, 100 Wn. App. at 212-13. Lastly, Fearghal argues that we should not apply *Pippins* because that decision preceded the legislature's requirement of child support worksheets in 1989. He fails to mention that our court decided *Schumacher*, which relied on *Pippins*, in 2000.

For these reasons, the trial court did not abuse its discretion in modifying provisions of the 2009 child support order without first finding a substantial change in circumstances. We review Fearghal's claims of error on these modifications for manifest abuse of discretion. *In re Marriage of Sprute*, 186 Wn. App. 342, 357, 344 P.3d 730 (2015).

A. DEVIATION FOR PATRICIA'S THIRD CHILD

Fearghal argues that the trial court erred in granting a downward deviation for Patricia's third child because that child was one year old at the time of the 2009 child support order and the parties did not deviate in 2009 from the standard child support calculation. We disagree.

The trial court has discretion to deviate from a standard calculation of child support when one of the parents has a child from another relationship. *Choate*, 143 Wn. App. at 241-42. The trial court must base its deviation on the total circumstances of both households. *Choate*, 143 Wn. App. at 242. Here, the trial court found that a downward deviation was appropriate due to Patricia's third child from another relationship and decreased her child support obligation accordingly.

Fearghal argues that the trial court's decision to order a downward deviation was erroneous because it did so without full disclosure of Patricia's husband's and stepdaughter's incomes and without written findings on that income in the child support worksheet. The record contains evidence of Patricia's husband's income. The record also specifies that Patricia's stepdaughter is a college student. Without evidence to the contrary, we presume that the trial court considered all the evidence before it in setting the support obligation in the child support order. *In re Marriage of Kelly*, 85 Wn. App. 785, 793, 934 P.2d 1218 (1997). The trial court's deviation was not an abuse of discretion.

B. REALLOCATION OF TAX EXEMPTION

Fearghal argues that the trial court's reallocation of the child tax exemption from him to Patricia was erroneous because the reallocation has a detrimental effect on him and is not in the best interests of the children. The record demonstrates that the trial court had before it Fearghal's tax returns for the businesses in which he is a shareholder at the time, his pay stubs, Patricia's and her husband's paystubs, and the information relating to Patricia's bankruptcy proceeding. Again, we presume that the trial court considered this evidence in setting the child support obligation. *Kelly*, 85 Wn. App. at 793. Given this evidence, the trial court did not abuse its discretion in reallocating the child tax exemption from Fearghal to Patricia.

C. MODIFICATION OF TERMINATION AND POSTSECONDARY EDUCATIONAL PROVISIONS

Fearghal argues that the trial court erred in modifying three provisions in the 2009 child support order related to postsecondary education. The modification order (1) provides that Patricia will pay child support for each child until both children reach the age of 18 or are enrolled in high school, whereas the 2009 child support order provided that she would pay child support in addition to 50 percent of all costs related to postsecondary educational support for each child as long as the child is enrolled in high school or an accredited postsecondary school, (2) provides that if the parents cannot agree on the amount that each would contribute to postsecondary education either of them could bring the issue to the trial court rather than require a set percentage contribution for each parent, as in the 2009 child support order, and (3) changes several other provisions, such as due dates, for payment of postsecondary educational support from the 2009 child support order. None of these changes constitute an abuse of discretion.

The 2009 child support order required Patricia to double-pay child support by imposing both her transfer payment *and* 50 percent of all costs relating to postsecondary education expenses, which expenses include the "necessities of life." RCW 26.19.090. "Postsecondary educational support *is* child support." *In re Marriage of Daubert*, 124 Wn. App. 483, 502, 99 P.3d 401 (2004), *as amended on reconsideration* (Dec. 16, 2004) *abrogated on other grounds by In re Marriage of McCausland*, 159 Wn.2d 607, 152 P.3d 1013 (2007) (emphasis added). Thus, the trial court's order that Patricia will pay child support for each child until the child reaches 18, or is no longer in high school, when she will then begin to pay postsecondary educational support, was not an abuse of discretion.

Fearghal next argues that the trial court erred in adding a provision allowing the parties to return to court if they cannot agree on the contribution amounts for postsecondary educational support because the parties did not consider it in the 2009 child support order and the provision opens the door to future litigation.

RCW 26.19.090(1)-(2) provides that postsecondary educational support schedules are advisory, not mandatory, and that the trial court shall consider if the child is actually dependent on the parents and shall exercise its discretion under the circumstances when deciding whether to order support for postsecondary education. The 2009 child support order also included a provision to allow a parent to recover the amount of an untimely payment for postsecondary educational support, plus interest, if the other parent failed to make that payment; this provision also allowed for future litigation. To achieve finality, the trial court's continued jurisdiction to resolve a potential future dispute over postsecondary educational support is not an abuse of discretion.

Jannot, 149 Wn.2d at 127 (we give deference to the trial court's decisions in domestic relations cases to achieve finality in emotional and financial issues).

Fearghal's remaining contentions about the postsecondary educational provisions relate to the trial court's reasonable changes that conformed the provisions to Washington law, such as requiring the parents to make payments directly to the educational institution. RCW 26.19.090(6). Lastly, as explained above, Fearghal's primary argument that these changes are prohibited because he moved only for an adjustment of child support is incorrect. The trial court did not abuse its discretion in modifying the postsecondary educational support provisions of the 2009 child support order.

II. TRIAL COURT'S CHILD SUPPORT WORKSHEET WAS NOT ERRONEOUS

Fearghal argues that the trial court miscalculated the transfer payment due to errors in the child support worksheet. He argues that the evidence does not support the worksheet's numbers for (1) Patricia's federal income tax withholding, (2) Patricia's Social Security and Medicare tax withholdings, (3) Patricia's health insurance costs, and (4) Fearghal's health insurance costs.[6] We disagree.

RCW 26.19.035 requires the trial court to file with its child support order a completed child support worksheet, which is a standard form developed by the administrative office of the courts

[6] Fearghal also argues that the trial court erred by (1) excluding special expenses in the child support worksheet and (2) limiting expenses not included in the transfer payment, but he did not object to these changes below. (Fearghal mentions the changes in the statement of facts, but does not explain why the error was unreasonable). Because these claims of error are not of constitutional magnitude, and we hold that the trial court did not err by modifying the 2009 child support order without finding a "substantial change in circumstances," we do not address them. RAP 2.5(a).

to calculate the proper amount of child support. The child support worksheet is signed by the parties and then reviewed and approved by the trial court at the time of entry of the child support order. RCW 26.19.035(3)-(4). The information contained in the approved child support worksheet constitutes findings of fact for the child support order. *Daubert*, 124 Wn. App. at 492. Substantial evidence must support the trial court's factual findings. *In re Parentage of Goude*, 152 Wn. App. 784, 790, 219 P.3d 717 (2009). Substantial evidence is evidence sufficient to persuade a fair-minded person of the truth of the declared premise. *Goude*, 152 Wn. App. at 790.

A. TAX, SOCIAL SECURITY, AND MEDICARE WITHHOLDINGS

Fearghal argues that the trial court's child support worksheet incorrectly lists Patricia's federal income tax withholding because it does not account for what he characterizes as Patricia's $116 per month in an income tax return. He is incorrect. The trial court's child support worksheet deducts $689 per month from Patricia's income for income taxes. To prove that the worksheet incorrectly states Patricia's income tax amount, Fearghal cites to her chapter 13 bankruptcy plan, which provided that she will "[r]etain [the f]irst $1400 of each [tax] refund." CP at 111. Averaged over 12 months, Fearghal arrives at the $116 per month figure. The bankruptcy plan was not evidence of Patricia's expected tax refund. Rather, it is the highest amount that she might receive under her bankruptcy plan because any amount above $1400 would be applied to her creditors. Thus, Fearghal's argument fails because he does not adequately support it.

Fearghal also argues that the trial court's withholding of $542 for Patricia's Social Security and Medicare taxes in the child support worksheet is erroneous, but he is incorrect. Fearghal provided this number in his proposed child support worksheet filed together with his motion for an adjustment of child support. To the extent that the trial court's withholding amount may be

incorrect, it was invited error. *In re Marriage of Morris*, 176 Wn. App. 893, 900, 309 P.3d 767 (2013) (the doctrine of invited error prohibits a party from setting up an error below and then complaining of it on appeal).

B. HEALTH INSURANCE COSTS

Fearghal argues that the child support worksheet, approved by the trial court, incorrectly calculated two health care provisions for the children in (1) including Patricia's cost to insure herself in the $333 calculation for Patricia's cost to insure the children and (2) not including Fearghal's cost to insure the children even though the court found that he had available coverage. We disagree.

The trial court set the amount of Patricia's health care coverage at $333.00 per month, which amount the record demonstrates was calculated based on the cost for Patricia's own health insurance subtracted from the cost to insure herself and two children to arrive at $332.58 per month. The trial court did not err.

As to Fearghal's healthcare costs, the 2009 child support order required Fearghal to provide insurance coverage for the children only if the cost did not exceed 25 percent of his child support obligation.[7] In the child support modification order, the trial court found that Fearghal's cost of health insurance coverage was $260.68, which is greater than 25 percent of his support obligation

[7] Fearghal assigns error to the trial court's removal of the 2009 child support order requirement that both parents provide health insurance for the children as long as it does not exceed 25 percent of the parent's basic support obligation. First, by Fearghal's own calculation, his current health care costs would exceed the 25 percent limit. Second, we have already rejected Fearghal's argument that the trial court was prohibited from modifying the support order under his adjustment motion.

of $411.00. The 2009 child support order also provided that the parents would each maintain coverage for the children "until further order of the court." CP at 5. Thus, the trial court did not abuse its discretion in relieving Fearghal of the requirement to cover the children's health insurance under RCW 26.09.105.[8]

III. THE TRIAL COURT'S RETROACTIVE COMMENCEMENT DATE WAS NOT ERROR

Lastly, Fearghal argues that the trial court abused its discretion by setting January 1, 2014, as the retroactive commencement date on the modification order rather than May 29, 2013, the date he filed his petition to adjust. He argues that the delay violated legislative intent to ensure children's basic needs are met commensurate with parents' income and standard of living. The record does not contain any indication that Fearghal objected to the commencement date or to any delay in the proceedings below. Fearghal cites no authority for the proposition that a trial court *must* order a retroactive commencement date. Thus, we decline to address this claim of error under RAP 2.5(a) because Fearghal failed to raise it in the trial court.[9]

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[8] In any child support order or modification of child support, RCW 26.09.105 requires the trial court to order both parents to provide health insurance for the children unless, "[u]nder appropriate circumstances," the trial court excuses one parent from the responsibility. RCW 26.09.-105(1)(a)(i), (1)(c).

[9] This is not an error of constitutional magnitude that requires our review under RAP 2.5(a). Although Fearghal cites two provisions of the Washington Constitution that prohibit the trial court from unnecessarily delaying resolution and require the trial court to rule within 90 days that a matter is submitted to it, those provisions do not apply here. CONST. art. I, § 10; CONST. art. IV, § 20. After delays due to unavailability and evidence gathering, the trial court made its decision within 90 days after the hearing.

IV. ATTORNEY FEES

Fearghal requests statutory attorney fees and $600 of costs under RAP 14.2, RAP 18.1, and RCW 26.09.140. Patricia requests reasonable attorney fees and costs under RAP 14.2, RAP 18.1, and RCW 26.09.140. Both parties submitted timely financial affidavits. We deny both requests.

RAP 14.2 provides that a party who substantially prevails on review will be awarded statutory attorney fees and reasonable expenses incurred on this court's review. RAP 18.1 provides that we will grant an award of reasonable attorney fees if a statute so provides. RCW 26.09.140 allows for an award of attorney fees and statutory costs on appeal for proceedings under chapter 26.09 RCW. Our decision to award attorney fees under RCW 26.09.140 is discretionary based upon each parties' ability to pay and the merits of the issues raised on appeal. *In re Marriage of Muhammad*, 153 Wn.2d 795, 807, 108 P.3d 779 (2005).

We deny Fearghal's request because he is not the prevailing party on appeal. Fearghal asserts, and Patricia does not dispute, that he is currently unemployed. Thus, although Patricia's arguments on appeal were meritorious, we do not grant her request for reasonable attorney fees and costs under RAP 18.1 and RCW 26.09.140.

CONCLUSION

Because the trial court did not abuse its discretion on any of Fearghal's claims of error, we affirm the trial court's modification of the child support order. We deny both parties' request for costs and attorney fees.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Sutton, J.
SUTTON, J.

We concur:

Johanson, C.J.
JOHANSON, C.J.

Bjorgen, J.
BJORGEN, J.

APPENDIX B

Statutes

RCW 26.09

RCW 26.09.002
RCW 26.09.105
RCW 26.09.170
RCW 26.09.175

RCW 26.19

RCW 26.19.001
RCW 26.19.035
RCW 26.19.075
RCW 26.19.090

RCW 26.09.002

Policy.

Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests. Residential time and financial support are equally important components of parenting arrangements. The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.

[2007 c 496 § 101; 1987 c 460 § 2.]

Notes:

Part headings not law -- 2007 c 496: "Part headings used in this act are not any part of the law." [2007 c 496 § 801.]

RCW 26.09.105

Child support — Medical support — Conditions.

(1) Whenever a child support order is entered or modified under this chapter, the court shall require both parents to provide medical support for any child named in the order as provided in this section.

(a) Medical support consists of:

(i) Health insurance coverage; and

(ii) Cash medical support.

(b) Cash medical support consists of:

(i) A parent's monthly payment toward the premium paid for coverage by either the other parent or the state, which represents the obligated parent's proportionate share of the premium paid, but no more than twenty-five percent of the obligated parent's basic support obligation; and

(ii) A parent's proportionate share of uninsured medical expenses.

(c) Under appropriate circumstances, the court may excuse one parent from the responsibility to provide health insurance coverage or the monthly payment toward the premium.

(d) The court shall always require both parents to contribute their proportionate share of uninsured medical expenses.

(2) Both parents share the obligation to provide medical support for the child or children specified in the order, by providing health insurance coverage or contributing a cash medical support obligation when appropriate, and paying a proportionate share of any uninsured medical expenses.

(3)(a) The court may specify how medical support must be provided by each parent under subsection (4) of this section.

(b) If the court does not specify how medical support will be provided or if neither parent provides proof that he or she is providing health insurance coverage for the child at the time the support order is entered, the division of child support or either parent may enforce a parent's obligation to provide medical support under RCW **26.18.170**.

(4)(a) If there is sufficient evidence provided at the time the order is entered, the court may make a determination of which parent must provide coverage and which parent must contribute a sum certain amount as his or her monthly payment toward the premium.

(b) If both parents have available health insurance coverage that is accessible to the child at the time the support order is entered, the court has discretion to order the parent with better coverage to provide the health insurance coverage for the child and the other parent to pay a monthly payment toward the premium. In making the determination of which coverage is better, the court shall consider the needs of the child, the cost and extent of each parent's coverage, and the accessibility of the coverage.

(c) Each parent shall remain responsible for his or her proportionate share of uninsured medical

expenses.

(5) The order must provide that if the parties' circumstances change, the parties' medical support obligations will be enforced as provided in RCW **26.18.170**.

(6) A parent who is ordered to maintain or provide health insurance coverage may comply with that requirement by:

(a) Providing proof of accessible private insurance coverage for any child named in the order; or

(b) Providing coverage that can be extended to cover the child that is available to that parent through employment or that is union-related, if the cost of such coverage does not exceed twenty-five percent of that parent's basic child support obligation.

(7) The court may order a parent to provide health insurance coverage that exceeds twenty-five percent of that parent's basic support obligation if it is in the best interests of the child to provide coverage.

(8) If the child receives state-financed medical coverage through the department under chapter **74.09** RCW for which there is an assignment, the obligated parent shall pay a monthly payment toward the premium.

(9) Each parent is responsible for his or her proportionate share of uninsured medical expenses for the child or children covered by the support order.

(10) The parents must maintain health insurance coverage as required under this section until:

(a) Further order of the court;

(b) The child is emancipated, if there is no express language to the contrary in the order; or

(c) Health insurance is no longer available through the parents' employer or union and no conversion privileges exist to continue coverage following termination of employment.

(11) A parent who is required to extend health insurance coverage to a child under this section is liable for any covered health care costs for which the parent receives direct payment from an insurer.

(12) This section shall not be construed to limit the authority of the court to enter or modify support orders containing provisions for payment of uninsured health expenses, health care costs, or insurance premiums which are in addition to and not inconsistent with this section.

(13) A parent ordered to provide health insurance coverage must provide proof of such coverage or proof that such coverage is unavailable within twenty days of the entry of the order to:

(a) The other parent; or

(b) The department of social and health services if the parent has been notified or ordered to make support payments to the Washington state support registry.

(14) Every order requiring a parent to provide health care or insurance coverage must be entered in compliance with *RCW **26.23.050** and be subject to direct enforcement as provided under chapter

26.18 RCW.

(15) When a parent is providing health insurance coverage at the time the order is entered, the premium shall be included in the worksheets for the calculation of child support under chapter **26.19** RCW.

(16) As used in this section:

(a) "Accessible" means health insurance coverage which provides primary care services to the child or children with reasonable effort by the custodian.

(b) "Cash medical support" means a combination of: (i) A parent's monthly payment toward the premium paid for coverage by either the other parent or the state, which represents the obligated parent's proportionate share of the premium paid, but no more than twenty-five percent of the obligated parent's basic support obligation; and (ii) a parent's proportionate share of uninsured medical expenses.

(c) "Health insurance coverage" does not include medical assistance

provided under chapter **74.09** RCW.

(d) "Uninsured medical expenses" includes premiums, copays, deductibles, along with other health care costs not covered by insurance.

(e) "Obligated parent" means a parent ordered to provide health insurance coverage for the children.

(f) "Proportionate share" means an amount equal to a parent's percentage share of the combined monthly net income of both parents as computed when determining a parent's child support obligation under chapter **26.19** RCW.

(g) "Monthly payment toward the premium" means a parent's contribution toward premiums paid by the other parent or the state for insurance coverage for the child, which is based on the obligated parent's proportionate share of the premium paid, but no more than twenty-five percent of the obligated parent's basic support obligation.

(17) The department of social and health services has rule-making authority to enact rules in compliance with 45 C.F.R. Parts 302, 303, 304, 305, and 308.

[2009 c 476 § 1; 1994 c 230 § 1; 1989 c 416 § 1; 1985 c 108 § 1; 1984 c 201 § 1.]

Notes:

***Reviser's note:** The reference to RCW **26.23.050** appears to refer to the amendments made by 1989 c 416 § 8, which was vetoed by the governor.

Effective date -- 2009 c 476: "This act takes effect October 1, 2009." [2009 c 476 § 10]

RCW 26.09.170

Modification of decree for maintenance or support, property disposition — Termination of maintenance obligation and child support — Grounds.

(1) Except as otherwise provided in RCW **26.09.070**(7), the provisions of any decree respecting maintenance or support may be modified: (a) Only as to installments accruing subsequent to the petition for modification or motion for adjustment except motions to compel court-ordered adjustments, which shall be effective as of the first date specified in the decree for implementing the adjustment; and, (b) except as otherwise provided in this section, only upon a showing of a substantial change of circumstances. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(2) Unless otherwise agreed in writing or expressly provided in the decree the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance or registration of a new domestic partnership of the party receiving maintenance.

(3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child or by the death of the parent obligated to support the child.

(4) Unless expressly provided by an order of the superior court or a court of comparable jurisdiction, provisions for the support of a child are terminated upon the marriage or registration of a domestic partnership to each other of parties to a paternity order, or upon the remarriage or registration of a domestic partnership to each other of parties to a decree of dissolution. The remaining provisions of the order, including provisions establishing paternity, remain in effect.

(5)(a) A party to an order of child support may petition for a modification based upon a showing of substantially changed circumstances at any time.

(b) An obligor's voluntary unemployment or voluntary underemployment, by itself, is not a substantial change of circumstances.

(6) An order of child support may be modified one year or more after it has been entered without a showing of substantially changed circumstances:

(a) If the order in practice works a severe economic hardship on either party or the child;

(b) If a party requests an adjustment in an order for child support which was based on guidelines which determined the amount of support according to the child's age, and the child is no longer in the age category on which the current support amount was based;

(c) If a child is still in high school, upon a finding that there is a need to extend support beyond the eighteenth birthday to complete high school; or

(d) To add an automatic adjustment of support provision consistent with RCW **26.09.100**.

(7)(a) If twenty-four months have passed from the date of the entry of the order or the last adjustment or modification, whichever is later, the order may be adjusted without a showing of

substantially changed circumstances based upon:

(i) Changes in the income of the parents; or

(ii) Changes in the economic table or standards in chapter **26.19** RCW.

(b) Either party may initiate the adjustment by filing a motion and child support worksheets.

(c) If the court adjusts or modifies a child support obligation pursuant to this subsection by more than thirty percent and the change would cause significant hardship, the court may implement the change in two equal increments, one at the time of the entry of the order and the second six months from the entry of the order. Twenty-four months must pass following the second change before a motion for another adjustment under this subsection may be filed.

(8)(a) The department of social and health services may file an action to modify or adjust an order of child support if public assistance money is being paid to or for the benefit of the child and the child support order is at least twenty-five percent above or below the appropriate child support amount set forth in the standard calculation as defined in RCW **26.19.011** and reasons for the deviation are not set forth in the findings of fact or order.

(b) The department of social and health services may file an action to modify or adjust an order of child support in a nonassistance case if:

(i) The child support order is at least twenty-five percent above or below the appropriate child support amount set forth in the standard calculation as defined in RCW **26.19.011**;

(ii) The department has determined the case meets the department's review criteria; and

(iii) A party to the order or another state or jurisdiction has requested a review.

(c) The determination of twenty-five percent or more shall be based on the current income of the parties and the department shall not be required to show a substantial change of circumstances if the reasons for the deviations were not set forth in the findings of fact or order.

(9) The department of social and health services may file an action to modify or adjust an order of child support under subsections (5) through (7) of this section if:

(a) Public assistance money is being paid to or for the benefit of the child;

(b) A party to the order in a nonassistance case has requested a review; or

(c) Another state or jurisdiction has requested a modification of the order.

(10) If testimony other than affidavit is required in any proceeding under this section, a court of this state shall permit a party or witness to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means, unless good cause is shown.

[2010 c 279 § 1; 2008 c 6 § 1017; 2002 c 199 § 1; 1997 c 58 § 910; 1992 c 229 § 2; 1991 sp.s. c 28 § 2; 1990 1st ex.s. c 2 § 2; 1989 c 416 § 3; 1988 c 275 § 17; 1987 c 430 § 1; 1973 1st ex.s. c 157 § 17.]

Notes:

Part headings not law -- Severability -- 2008 c 6: See RCW 26.60.900 and 26.60.901.

Short title -- Part headings, captions, table of contents not law -- Exemptions and waivers from federal law -- Conflict with federal requirements -- Severability -- 1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Severability -- Effective date -- Captions not law -- 1991 sp.s. c 28: See notes following RCW 26.09.100.

Effective dates -- Severability -- 1990 1st ex.s. c 2: See notes following RCW 26.09.100.

Effective dates -- Severability -- 1988 c 275: See notes following RCW 26.19.001.

Severability -- 1987 c 430: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 430 § 4.]

RCW 26.09.175

Modification of order of child support.

(1) A proceeding for the modification of an order of child support shall commence with the filing of a petition and worksheets. The petition shall be in the form prescribed by the administrator for the courts. There shall be a fee of twenty dollars for the filing of a petition for modification of dissolution.

(2)(a) The petitioner shall serve upon the other party the summons, a copy of the petition, and the worksheets in the form prescribed by the administrator for the courts. If the modification proceeding is the first action filed in this state, service shall be made by personal service. If the decree to be modified was entered in this state, service shall be by personal service or by any form of mail requiring a return receipt. Proof of service shall be filed with the court.

(b) If the support obligation has been assigned to the state pursuant to RCW **74.20.330** or the state has a subrogated interest under RCW **74.20A.030**, the summons, petition, and worksheets shall also be served on the attorney general; except that notice shall be given to the office of the prosecuting attorney for the county in which the action is filed in lieu of the office of the attorney general in those counties and in the types of cases as designated by the office of the attorney general by letter sent to the presiding superior court judge of that county.

(3) As provided for under RCW **26.09.170**, the department of social and health services may file an action to modify or adjust an order of child support if:

(a) Public assistance money is being paid to or for the benefit of the child;

(b) A party to the order in a nonassistance case has requested a review; or

(c) Another state or jurisdiction has requested a modification of the order.

(4) A responding party's answer and worksheets shall be served and the answer filed within twenty days after service of the petition or sixty days if served out of state. A responding party's failure to file an answer within the time required shall result in entry of a default judgment for the petitioner.

(5) At any time after responsive pleadings are filed, any party may schedule the matter for hearing.

(6) Unless all parties stipulate to arbitration or the presiding judge authorizes oral testimony pursuant to subsection (7) of this section, a petition for modification of an order of child support shall be heard by the court on affidavits, the petition, answer, and worksheets only.

(7) A party seeking authority to present oral testimony on the petition to modify a support order shall file an appropriate motion not later than ten days after the time of notice of hearing. Affidavits and exhibits setting forth the reasons oral testimony is necessary to a just adjudication of the issues shall accompany the petition. The affidavits and exhibits must demonstrate the extraordinary features of the case. Factors which may be considered include, but are not limited to: (a) Substantial questions of credibility on a major issue; (b) insufficient or inconsistent discovery materials not correctable by further discovery; or (c) particularly complex circumstances requiring expert testimony.

(8) If testimony other than affidavit is required in any proceeding under this section, a court of this state shall permit a party or witness to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means, unless good cause is shown.

[2010 c 279 § 2; 2002 c 199 § 2; 1992 c 229 § 3; 1991 c 367 § 6; 1990 1st ex.s. c 2 § 3; 1987 c 430 § 2.]

Notes:

Severability -- Effective date -- Captions not law -- 1991 c 367: See notes following RCW **26.09.015**.

Effective dates -- Severability -- 1990 1st ex.s. c 2: See notes following RCW **26.09.100**.

Severability -- 1987 c 430: See note following RCW **26.09.170**.

RCW 26.19.001

Legislative intent and finding.

The legislature intends, in establishing a child support schedule, to insure that child support orders are adequate to meet a child's basic needs and to provide additional child support commensurate with the parents' income, resources, and standard of living. The legislature also intends that the child support obligation should be equitably apportioned between the parents.

The legislature finds that these goals will be best achieved by the adoption and use of a statewide child support schedule. Use of a statewide schedule will benefit children and their parents by:

(1) Increasing the adequacy of child support orders through the use of economic data as the basis for establishing the child support schedule;

(2) Increasing the equity of child support orders by providing for comparable orders in cases with similar circumstances; and

(3) Reducing the adversarial nature of the proceedings by increasing voluntary settlements as a result of the greater predictability achieved by a uniform statewide child support schedule.

[1988 c 275 § 1.]

Notes:

Effective dates -- 1988 c 275: "Except for sections 4, 8, and 9 of this act, this act shall take effect July 1, 1988. Sections 4 and 8 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 24, 1988]." [1988 c 275 § 23.]

Severability -- 1988 c 275: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 275 § 24.]

RCW 26.19.035

Standards for application of the child support schedule.

(1) **Application of the child support schedule.** The child support schedule shall be applied:

(a) In each county of the state;

(b) In judicial and administrative proceedings under this title or Title **13** or **74** RCW;

(c) In all proceedings in which child support is determined or modified;

(d) In setting temporary and permanent support;

(e) In automatic modification provisions or decrees entered pursuant to RCW **26.09.100**; and

(f) In addition to proceedings in which child support is determined for minors, to adult children who are dependent on their parents and for whom support is ordered pursuant to RCW **26.09.100**.

The provisions of this chapter for determining child support and reasons for deviation from the standard calculation shall be applied in the same manner by the court, presiding officers, and reviewing officers.

(2) **Written findings of fact supported by the evidence.** An order for child support shall be supported by written findings of fact upon which the support determination is based and shall include reasons for any deviation from the standard calculation and reasons for denial of a party's request for deviation from the standard calculation. The court shall enter written findings of fact in all cases whether or not the court: (a) Sets the support at the presumptive amount, for combined monthly net incomes below five thousand dollars; (b) sets the support at an advisory amount, for combined monthly net incomes between five thousand and seven thousand dollars; or (c) deviates from the presumptive or advisory amounts.

(3) **Completion of worksheets.** Worksheets in the form developed by the administrative office of the courts shall be completed under penalty of perjury and filed in every proceeding in which child support is determined. The court shall not accept incomplete worksheets or worksheets that vary from the worksheets developed by the administrative office of the courts.

(4) **Court review of the worksheets and order.** The court shall review the worksheets and the order setting support for the adequacy of the reasons set forth for any deviation or denial of any request for deviation and for the adequacy of the amount of support ordered. Each order shall state the amount of child support calculated using the standard calculation and the amount of child support actually ordered. Worksheets shall be attached to the decree or order or if filed separately shall be initialed or signed by the judge and filed with the order.

[2005 c 282 § 36; 1992 c 229 § 6; 1991 c 367 § 27.]

Notes:

Severability -- Effective date -- Captions not law -- 1991 c 367: See notes following RCW **26.09.015**.

RCW 26.19.075

Standards for deviation from the standard calculation.

(1) Reasons for deviation from the standard calculation include but are not limited to the following:

(a) **Sources of income and tax planning.** The court may deviate from the standard calculation after consideration of the following:

(i) Income of a new spouse or new domestic partner if the parent who is married to the new spouse or in a partnership with a new domestic partner is asking for a deviation based on any other reason. Income of a new spouse or new domestic partner is not, by itself, a sufficient reason for deviation;

(ii) Income of other adults in the household if the parent who is living with the other adult is asking for a deviation based on any other reason. Income of the other adults in the household is not, by itself, a sufficient reason for deviation;

(iii) Child support actually received from other relationships;

(iv) Gifts;

(v) Prizes;

(vi) Possession of wealth, including but not limited to savings, investments, real estate holdings and business interests, vehicles, boats, pensions, bank accounts, insurance plans, or other assets;

(vii) Extraordinary income of a child;

(viii) Tax planning considerations. A deviation for tax planning may be granted only if the child would not receive a lesser economic benefit due to the tax planning; or

(ix) Income that has been excluded under *RCW **26.19.071**(4)(h) if the person earning that income asks for a deviation for any other reason.

(b) **Nonrecurring income.** The court may deviate from the standard calculation based on a finding that a particular source of income included in the calculation of the basic support obligation is not a recurring source of income. Depending on the circumstances, nonrecurring income may include overtime, contract-related benefits, bonuses, or income from second jobs. Deviations for nonrecurring income shall be based on a review of the nonrecurring income received in the previous two calendar years.

(c) **Debt and high expenses.** The court may deviate from the standard calculation after consideration of the following expenses:

(i) Extraordinary debt not voluntarily incurred;

(ii) A significant disparity in the living costs of the parents due to conditions beyond their control;

(iii) Special needs of disabled children;

(iv) Special medical, educational, or psychological needs of the children; or

(v) Costs incurred or anticipated to be incurred by the parents in compliance with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child.

(d) **Residential schedule.** The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving temporary assistance for needy families. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.

(e) **Children from other relationships.** The court may deviate from the standard calculation when either or both of the parents before the court have children from other relationships to whom the parent owes a duty of support.

(i) The child support schedule shall be applied to the mother, father, and children of the family before the court to determine the presumptive amount of support.

(ii) Children from other relationships shall not be counted in the number of children for purposes of determining the basic support obligation and the standard calculation.

(iii) When considering a deviation from the standard calculation for children from other relationships, the court may consider only other children to whom the parent owes a duty of support. The court may consider court-ordered payments of child support for children from other relationships only to the extent that the support is actually paid.

(iv) When the court has determined that either or both parents have children from other relationships, deviations under this section shall be based on consideration of the total circumstances of both households. All child support obligations paid, received, and owed for all children shall be disclosed and considered.

(2) All income and resources of the parties before the court, new spouses or new domestic partners, and other adults in the households shall be disclosed and considered as provided in this section. The presumptive amount of support shall be determined according to the child support schedule. Unless specific reasons for deviation are set forth in the written findings of fact and are supported by the evidence, the court shall order each parent to pay the amount of support determined by using the standard calculation.

(3) The court shall enter findings that specify reasons for any deviation or any denial of a party's request for any deviation from the standard calculation made by the court. The court shall not consider reasons for deviation until the court determines the standard calculation for each parent.

(4) When reasons exist for deviation, the court shall exercise discretion in considering the extent to which the factors would affect the support obligation.

(5) Agreement of the parties is not by itself adequate reason for any deviations from the standard

calculation.

[2009 c 84 § 4; 2008 c 6 § 1039; 1997 c 59 § 5; 1993 c 358 § 5; 1991 sp.s. c 28 § 6.]

Notes:

***Reviser's note:** RCW **26.19.071** was amended by 2011 1st sp.s. c 36 § 14, changing subsection (4)(h) to subsection (4)(i).

Effective date -- 2009 c 84: See note following RCW **26.19.020**.

Part headings not law -- Severability -- 2008 c 6: See RCW **26.60.900** and **26.60.901**.

Severability -- Effective date -- Captions not law -- 1991 sp.s. c 28: See notes following RCW **26.09.100**.

RCW 26.19.090

Standards for postsecondary educational support awards.

(1) The child support schedule shall be advisory and not mandatory for postsecondary educational support.

(2) When considering whether to order support for postsecondary educational expenses, the court shall determine whether the child is in fact dependent and is relying upon the parents for the reasonable necessities of life. The court shall exercise its discretion when determining whether and for how long to award postsecondary educational support based upon consideration of factors that include but are not limited to the following: Age of the child; the child's needs; the expectations of the parties for their children when the parents were together; the child's prospects, desires, aptitudes, abilities or disabilities; the nature of the postsecondary education sought; and the parents' level of education, standard of living, and current and future resources. Also to be considered are the amount and type of support that the child would have been afforded if the parents had stayed together.

(3) 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.

(4) The child shall also make available all academic records and grades to both parents as a condition of receiving postsecondary educational support. Each parent shall have full and equal access to the postsecondary education records as provided in RCW **26.09.225**.

(5) The court shall not order the payment of postsecondary educational expenses beyond the child's twenty-third birthday, except for exceptional circumstances, such as mental, physical, or emotional disabilities.

(6) The court shall direct that either or both parents' payments for postsecondary educational expenses be made directly to the educational institution if feasible. If direct payments are not feasible, then the court in its discretion may order that either or both parents' payments be made directly to the child if the child does not reside with either parent. If the child resides with one of the parents the court may direct that the parent making the support transfer payments make the payments to the child or to the parent who has been receiving the support transfer payments.

[1991 sp.s. c 28 § 7; 1990 1st ex.s. c 2 § 9.]

Notes:

Severability -- Effective date -- Captions not law -- 1991 sp.s. c 28: See notes following RCW **26.09.100**.

Effective dates -- Severability -- 1990 1st ex.s. c 2: See notes following RCW **26.09.100**.

APPENDIX C

Constitutional Provisions

CONST. art. I, §10

CONST. art. IV, §20

PREAMBLE

We, the people of the State of Washington, grateful to the Supreme Ruler of the Universe for our liberties, do ordain this constitution.

ARTICLE I
DECLARATION OF RIGHTS

SECTION 1 POLITICAL POWER. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

SECTION 2 SUPREME LAW OF THE LAND. The Constitution of the United States is the supreme law of the land.

SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law.

SECTION 4 RIGHT OF PETITION AND ASSEMBLAGE. The right of petition and of the people peaceably to assemble for the common good shall never be abridged.

SECTION 5 FREEDOM OF SPEECH. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.

SECTION 6 OATHS - MODE OF ADMINISTERING. The mode of administering an oath, or affirmation, shall be such as may be most consistent with and binding upon the conscience of the person to whom such oath, or affirmation, may be administered.

SECTION 7 INVASION OF PRIVATE AFFAIRS OR HOME PROHIBITED. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

SECTION 8 IRREVOCABLE PRIVILEGE, FRANCHISE OR IMMUNITY PROHIBITED. No law granting irrevocably any privilege, franchise or immunity, shall be passed by the legislature.

SECTION 9 RIGHTS OF ACCUSED PERSONS. No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.

SECTION 10 ADMINISTRATION OF JUSTICE. Justice in all cases shall be administered openly, and without unnecessary delay.

SECTION 11 RELIGIOUS FREEDOM. Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: PROVIDED, HOWEVER, That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional, and mental institutions, or by a county's or public hospital district's hospital, health care facility, or hospice, as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony. [**AMENDMENT 88,** 1993 House Joint Resolution No. 4200, p 3062. Approved November 2, 1993.]

Amendment 34 (1957) — Art. 1 Section 11 RELIGIOUS FREEDOM — *Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion: but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment:* Provided, however, *That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional and mental institutions as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.* [AMENDMENT 34, 1957 Senate Joint Resolution No. 14, p 1299. Approved November 4, 1958.]

Amendment 4 (1904) — Art. 1 Section 11 RELIGIOUS FREEDOM — *Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment.* Provided, however, *That this article shall not be so construed as to forbid the employment by the state of a chaplain for the state penitentiary, and for such of the state reformatories as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.* [AMENDMENT 4, 1903 p 283 Section 1. Approved November, 1904.]

Original text — Art. 1 Section 11 RELIGIOUS FREEDOM — *Absolute freedom of conscience in all matters of religious sentiment, belief, and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person, or property, on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for, or applied to any religious worship, exercise or instruction, or the support of any religious establishment. No religious qualification shall be required for any public office, or employment, nor shall any person be incompetent as a witness, or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.*

SECTION 12 SPECIAL PRIVILEGES AND IMMUNITIES PROHIBITED. No law shall be passed

any of the courts of this state, excepting justices of the peace, shall be courts of record.

SECTION 12 INFERIOR COURTS. The legislature shall prescribe by law the jurisdiction and powers of any of the inferior courts which may be established in pursuance of this Constitution.

SECTION 13 SALARIES OF JUDICIAL OFFICERS — HOW PAID, ETC. No judicial officer, except court commissioners and unsalaried justices of the peace, shall receive to his own use any fees or perquisites of office. The judges of the supreme court and judges of the superior courts shall severally at stated times, during their continuance in office, receive for their services the salaries prescribed by law therefor, which shall not be increased after their election, nor during the term for which they shall have been elected. The salaries of the judges of the supreme court shall be paid by the state. One-half of the salary of each of the superior court judges shall be paid by the state, and the other one-half by the county or counties for which he is elected. In cases where a judge is provided for more than one county, that portion of his salary which is to be paid by the counties shall be apportioned between or among them according to the assessed value of their taxable property, to be determined by the assessment next preceding the time for which such salary is to be paid.

Authorizing compensation increase during term: Art. 30 Section 1.

Increase or diminution of compensation during term of office prohibited
county, city or municipal officers: Art. 11 Section 8.
public officers: Art. 2 Section 25.
state officers: Art. 3 Section 25.

SECTION 14 SALARIES OF SUPREME AND SUPERIOR COURT JUDGES. Each of the judges of the supreme court shall receive an annual salary of four thousand dollars ($4,000); each of the superior court judges shall receive an annual salary of three thousand dollars ($3,000), which said salaries shall be payable quarterly. The legislature may increase the salaries of judges herein provided.

Compensation of legislators, elected state officials, and judges: Art. 28 Section 1.

SECTION 15 INELIGIBILITY OF JUDGES. The judges of the supreme court and the judges of the superior court shall be ineligible to any other office or public employment than a judicial office, or employment, during the term for which they shall have been elected.

SECTION 16 CHARGING JURIES. Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law.

SECTION 17 ELIGIBILITY OF JUDGES. No person shall be eligible to the office of judge of the supreme court, or judge of a superior court, unless he shall have been admitted to practice in the courts of record of this state, or of the Territory of Washington.

SECTION 18 SUPREME COURT REPORTER. The judges of the supreme court shall appoint a reporter for the decisions of that court, who shall be removable at their pleasure. He shall receive such annual salary as shall be prescribed by law.

SECTION 19 JUDGES MAY NOT PRACTICE LAW. No judge of a court of record shall practice law in any court of this state during his continuance in office.

SECTION 20 DECISIONS, WHEN TO BE MADE. Every cause submitted to a judge of a superior court for his decision shall be decided by him within ninety days from the submission thereof; *Provided,* That if within said period of ninety days a rehearing shall have been ordered, then the period within which he is to decide shall commence at the time the cause is submitted upon such a hearing.

SECTION 21 PUBLICATION OF OPINIONS. The legislature shall provide for the speedy publication of opinions of the supreme court, and all opinions shall be free for publication by any person.

SECTION 22 CLERK OF THE SUPREME COURT. The judges of the supreme court shall appoint a clerk of that court who shall be removable at their pleasure, but the legislature may provide for the election of the clerk of the supreme court, and prescribe the term of his office. The clerk of the supreme court shall receive such compensation by salary only as shall be provided by law.

SECTION 23 COURT COMMISSIONERS. There may be appointed in each county, by the judge of the superior court having jurisdiction therein, one or more court commissioners, not exceeding three in number, who shall have authority to perform like duties as a judge of the superior court at chambers, subject to revision by such judge, to take depositions and to perform such other business connected with the administration of justice as may be prescribed by law.

SECTION 24 RULES FOR SUPERIOR COURTS. The judges of the superior courts, shall from time to time, establish uniform rules for the government of the superior courts.

SECTION 25 REPORTS OF SUPERIOR COURT JUDGES. Superior judges, shall on or before the first day of November in each year, report in writing to the judges of the supreme court such defects and omissions in the laws as their experience may suggest, and the judges of the supreme court shall on or before the first day of January in each year report in writing to the governor such defects and omissions in the laws as they may believe to exist.

SECTION 26 CLERK OF THE SUPERIOR COURT. The county clerk shall be by virtue of his office, clerk of the superior court.

DECLARATION OF SERVICE

On October 5, 2015, I served the foregoing AMENDED PETITION FOR REVIEW on:

David J Corbett
2106 N. Steele Street
Tacoma, WA 98406
david@davidcorbettlaw.com

by **transmitting** via electronic mail in accordance with the agreement of the person(s) served, a full, true and correct copy thereof to the attorney at the e-mail address number shown above, which is the last-known e-mail address for the attorney's office, on the date set forth below.

I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct on October 5, 2015 at Vancouver, Washington.

Fearghal McCarthy

OFFICE RECEPTIONIST, CLERK

To: Fearghal Mc Carthy
Cc: David Corbett
Subject: RE: Court of Appeals #: 45956-6-II

Received on 10-05-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing i
mail attachment, it is not necessary to mail to the court the original of the document.

From: Fearghal Mc Carthy [mailto:fearghalmccarthy001@gmail.com]
Sent: Monday, October 05, 2015 12:26 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: David Corbett <david@davidcorbettlaw.com>
Subject: Court of Appeals #: 45956-6-II

To the Clerk of the Supreme Court:

A Petition for Review in this case was timely filed on October 1, 2015. A case number from the Suprem
has not yet been assigned.

Please find attached the following documents for filing:

1) Motion to File Amended Petition for Review
2) Amended Petition for Review

Sincerely,
Fearghal McCarthy
360-944-8200
fearghalmccarthy001@gmail.com