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SUPREME COURT  
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**No. 98172-8-I**

**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

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**JAMES ALAN CLARK,**

Appellant,

v.

**WENDY KRISTINE CLARK,**

Respondent.

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Amended

**PETITION FOR REVIEW**

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**A. IDENTITY OF PETITIONER**

James Clark, appellant below and father of the children at issue in this case, asks this Court to accept review of the Court of Appeals' decision affirming the modification petition denial. See Part B.

**B. COURT OF APPEALS DECISION**

Petitioner James Clark, seeks review of the Court of Appeals' decision entered on January 13, 2020, affirming the trial court's order to deny appellant's modification petition to award residential credit and reverse all legal fees to appellant based on financial circumstances. A copy of the decision is attached. (Appendix A)

**C. ISSUES PRESENTED FOR REVIEW**

1. Should it be considered "obvious on the record" that the basic support obligation for children with shared 50/50 residential custody schedules are incurred approximately equally between each parent's household?

2. Should it be considered "unmistakable, evident, or indisputable" that a denial of residential credit for a 50/50 shared residential household results in the most restrictive child support order?

3. Should it be considered "unmistakable, evident, or indisputable" that the default denial of residential credit due to RCW

26.19.075(1)(d) orders the most restrictive child support order and thus violates a parent's constitutional property and liberty rights when a least restrictive (full residential credit) or narrowly tailored (partial residential credit) child support order would provide the receiving household with enough resources?

4. Does the lack of an Attachment for Residential Schedule Adjustment for 50/50 and other significantly shared households represent a procedural due process constitutional violation?

5. Does the mere difference in income between parents, no matter how large, provide a sufficient reason to refuse a residential credit deviation to 50/50 families?

6. Does the vagueness doctrine apply to denying residential credit due to a "difference in incomes" or "insufficient resources"?

7. Does a denial of residential credit equally protect the children when \$0 is apportioned to a 50/50 custodial parent's household?

8. Should the pro se appellant's constitutional arguments be considered even though not all RAP requirements were strictly adhered to?

9. Do constitutional limits apply to child support orders submitted by the State of Washington for Federal reimbursement?

**D. STATEMENT OF THE CASE**

James and Wendy divorced after eleven years of marriage in May 2011 with a daughter (8) and son (6). James used a collaborative law firm and sought a 50/50 plan with residential credit. The court in May 2010 made Wendy the primary custodian and awarded her the family home with a \$4,000 per month budget while she transitioned back into the workforce after 6 years at home. The 50/50 parenting plan was only reached after a year of expensive litigation and mediation to get agreement from Wendy to share equal custodial rights and a 50/50 shared residential schedule.

When spousal maintenance ended in January 2012, James sought the previously agreed to child support review of Wendy's new income and circumstances to receive an award of residential credit. The court imputed Wendy's income to be \$2,333 on March 5, 2012 after a motion to reconsider in which Wendy "contends she is as employed as can be." Additionally, "The court will order a deviation for residential credit based on the economic status of both parties."

In July 2014, Wendy's average monthly income was over \$4,000 per month. James sought a residential credit per a modification petition. Even though Wendy's income was more than 100% of the \$4,000 per month household budget, the court refused to deviate and not because Wendy had insufficient resources, but rather because of the income



difference between the two MBA-educated parents.

In July 2017, James filed a modification petition with a proposed child support order that would have committed him to paying a total of \$3,054 in child support each month. The first \$2,054 (using the court's final income calculations) would be his basic support obligation per the WSCSS worksheets and he voluntarily proposed an additional \$1,000 per month educational savings account payment to fully fund the children's University of Washington (or similarly costing) undergraduate college educations. The ability for James to fund the children's education depended upon the court ordering a least restrictive \$1,440 residential credit to James. Even though approximately 70% (\$1,000 of \$1,440) of the 'savings' would be passed directly to the children's education, the court refused and described James' attempt as a cynical and transparent attempt to further his own financial interests and reversed 100% of Wendy's legal fees onto James. The Court of Appeals affirmed the trial court's ruling in June 2018 and again reversed all of Wendy's legal fees onto James.

In July 2018, James sought a modification after a layoff from Northrop Grumman in which his hours and salary were cut to 20 hours per week resulting in an \$85K annual salary with his new employer. James documented in his modification petition declarations that he was hired by Northrop Grumman in 2005 on the same 20 hour per week work from

home schedule earning \$78K annually which supported the family from 2005 – 2008 including what is now Wendy’s home. The trial court refused to deviate, reversed all of Wendy’s legal fees onto James, and found that James was engaged in vexatious litigation. The appellate court affirmed the trial court’s ruling and again reversed Wendy’s legal fees.

After the Court of Appeals denial on January 13, 2020, James filed a modification petition on February 28, 2020 heard on April 28, 2020. James framed his trial court argument in constitutional terms: he sought the least restrictive order of a \$357 monthly transfer payment after a \$1,190 residential credit deviation. Wendy’s attorney offered a narrowly tailored order of \$1,005. The court rejected the least restrictive \$357 order that would also enable James to pay another proposed \$800 - \$1000 monthly over the next year or more to repay legal fees. It also rejected the creation of a narrowly tailored order up to the \$1,005 offer that Wendy made. Instead, the court ordered the most restrictive order of \$1,547 (Appendix B) and ordered James to pay 100% of all Wendy’s legal fees and mediation fees. (Appendix C,D) James is being forced into mediation, since he can’t revise a Judge’s order and can’t appeal a temporary child support order, now set at an unconstitutionally most restrictive \$1,547 in Wendy’s favor, while also being ordered to pay all of her legal fees. Wendy has no incentive to negotiate and it costs her nothing to litigate.

James seeks review in this Court.

**E. ARGUMENT WHY REVIEW SHOULD BE GRANTED**

The State of Washington routinely violates parents' constitutional property and liberty rights in the 51.6% majority of all custody cases statewide when courts systemically deny residential credit to 50/50 and other significantly shared custody families. There is no fair process when there is no approved method of calculation for apportioning the total amount of child support owed in shared custody arrangements to calculate the least restrictive order. It is manifest error for the court to maintain that each parent is paying their presumptive support obligations as calculated by the WSCSS worksheets when residential credit is denied in 50/50 and other significantly shared residential schedules.

The Washington State Child Support Schedule Workgroups have repeatedly stated "on the record" in their 2011, 2015, and 2019 reports that children's residential expenses are shared approximately equally between parents with equal residential schedules. Thus, the apportionment of all support to one household (\$2,880 in this case for two children) and \$0 to the other household when each household should be apportioned \$1,440, creates a significant disparity in the amount of support available for the children in each household and does not equally protect the children. A

denial of residential credit places more than the entire combined monthly net income calculation of the basic support obligation on one parent while completely relieving the other parent of their presumptive financial support obligation, and does not meet the legislature's intention of equitably apportioning the child support obligation between both parents, RCW 26.19.001. Apportioning \$0 of support to a 50/50 household interferes with that parent's fundamental liberty interest to be able to care for their children, establish a home, and control their educations.

When a receiving household has a larger net income than the court reviewed household budget, the court then relies on the ambiguous and unconstitutionally vague "difference in income" to deny residential credit and impose the most restrictive child support order. Once the minimum needs of the child are met with each household apportioned \$1,190 of support, the court's opinion of what is in the best interest of the child is *de minimus* and does not overrule a fit parent's fundamental liberty interests.

The justice issue is that the State has the ability to self-deal itself the largest financial payment from the Federal government by creating the most restrictive and one-sided child support orders. The Federal government provides to the State of Washington per 45 CFR §304.12 a minimum incentive payment of 6% of support collections ranging up to 10% for support orders with a 2.8 or higher ratio between collections and

administrative costs. The state is also reimbursed 2:1 by the Federal government for creating the most restrictive orders that require DCS to enforce. In 2019, the state spent \$43.7 million to receive a \$104.5 million Federal match,<sup>1</sup> not to mention the thousands of dollars every case like this generates for the local courts in filing fees, copying fees, clerk paper fees, packet fees, etc.

The most restrictive orders with the largest transfer payments incentivize the state with the most money. The least restrictive orders with the smallest transfer payments incentivize the state with the least money. The state has a financial self-interest to apportion \$0 in residential credit to every shared parenting household possible to maximize child support collections from parents and thus maximize the state's incentive payments from the Federal government. Courts that deny residential credit are being allowed to rule in the financial best self-interest of the State rather than the children's best interest because the State profits from the conflict it creates.

***There is no exception to the Constitution for family law child support orders and they are subject to the same least restrictive or***

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<sup>1</sup> [https://www.dshs.wa.gov/sites/default/files/ESA/briefing-manual/2019ESA\\_Briefing\\_Book\\_Full.pdf](https://www.dshs.wa.gov/sites/default/files/ESA/briefing-manual/2019ESA_Briefing_Book_Full.pdf), page 23-24

*narrowly tailored limits to pass constitutional muster.*

The Supreme Court should use this case to order the Administrative Office of the Courts to create an Attachment for Residential Schedule Adjustment to provide fair process and to ensure child support orders are least restrictive or narrowly tailored to remain in constitutional compliance with the state's Title IV-D child support plan including 45 CFR §304.10 – 304.50. Courts should be expected to use the Attachment to create least restrictive and/or narrowly tailored orders.

- 1. It should be considered “obvious on the record” that the basic support obligation for children with shared 50/50 residential custody schedules are incurred approximately equally between each parent’s household.**

The Washington Child Support Schedule Workgroups have extensively documented that expenses in 50/50 shared residential custody households are shared approximately equally between parents. The 2011 Workgroup recommended in its final report that “There should be a residential schedule credit, not just a deviation” and included a Parenting Time Credit Worksheet and Parenting Time Table to credit 50/50 homes with the 50% of duplicated expenses (Appendix XI of Final Report). The 2015 Workgroup focused exclusively on one issue in their 2015 Final Report: “a residential schedule deviation based on the time that the children spend with the paying parent.”

It should be obvious that when both parents are providing their children 21 plates of food weekly (averaged over a two week 3-4-4-3 residential schedule), they both have similar expenses. All the food and expenses James pays for the two children during their 50% residential time with him relieves Wendy of those same expenses.

**2. It should be considered “unmistakable, evident, or indisputable” that a denial of residential credit for a 50/50 shared residential household results in the most restrictive child support order.**

A denial of residential credit to 50/50 residential household results in the most restrictive child support order as illustrated in Appendix D of the Appellant’s Brief. James is paying Wendy a total of 72% (\$2,054) of the total basic support obligation as calculated by their combined monthly incomes while he incurs an additional 50% (\$1,440) of the basic support obligation out of pocket during the children’s 50% residential schedule with him. It should be clear that James pays 122% (\$3,494) of the maximum \$2,880 of the RCW 26.19.020 economic support tables. James pays all \$1,440 of the children’s expenses at his home out of pocket, pays all \$1,440 of the children’s expenses at Wendy’s home, and then provides another \$614 to Wendy as part of the \$2,054 transfer payment. The most restrictive order has James paying \$3,494 monthly towards the maximum \$2,880 CMNI basic support obligation calculation.

In comparison, the least restrictive order requires Wendy to pay the first \$826 (28%) of her own monthly expenses and then receives a \$614 (22%) transfer payment from James so that she has an equal \$1,440 (50%) of basic support at her house that residential credit apportions to James. Residential credit results in James paying a total basic support obligation of \$2,054 and Wendy \$826 as calculated per the WSCSS worksheets.

Only through a residential credit deviation is the least restrictive child support order entered in which both parents pay their proportional net income share of the basic support obligation as calculated on the WSCSS worksheets. *It is manifest error for the court to maintain that each parent is paying their presumptive support obligations as calculated by the WSCSS worksheets when residential credit is denied in 50/50 and other significantly shared residential schedules.*

- 3. It should be considered “unmistakable, evident, or indisputable” that the default denial of residential credit due to RCW 26.19.075(1)(d) orders the most restrictive child support order and thus violates a parent’s constitutional property and liberty rights when a least restrictive (full residential credit) or narrowly tailored (partial residential credit) order would provide the receiving household with enough resources.**

Any state practice that interferes with a parent’s fundamental Constitutional rights is subject to a tripartite strict scrutiny test. This means it survives Constitutional scrutiny only if it is narrowly tailored to serve a compelling state interest and uses the least restrictive means



available to do so. *Washington v. Glucksberg*, 521 U.S. 702 (1997)

In this case, Wendy's approximately \$4,300 monthly net income plus an additional \$2,054 in child support, is over \$6,350 – far over the \$4,000 monthly budget the court awarded her as full support for the house in 2010 and significantly more than every financial declaration budget she has ever submitted over the past 10 years. Even if the standard is to provide 100% of household expenses and debt payments to ensure enough resources for the household receiving support, the court has chosen since 2014 to violate the Constitution by not narrowly tailoring child support awards to provide just enough resources for the household receiving support, but not more.

When the courts do not order the least restrictive or a narrowly tailored child support order, they fundamentally violate the obligor parent's constitutional liberty rights and property rights. Excessive child support orders impact the obligor parent's ability and thus his rights to establish a home and bring up children and to control the education of their own. Excessive child support orders impact substantive due process rights including obligor's right, coupled with the high duty, to recognize and prepare his children for additional obligations. The court's denial in July 2017 of residential credit means \$0 is saved for the children's educational best interests instead of \$35,000 as of May 2020, as father

proposed. The best interests of the children have not been served by the court substituting its financial judgement over that of a fit custodial parent.

**4. The lack of an Attachment for Residential Schedule Adjustment is a procedural due process constitutional violation for 50/50 and other significantly shared households.**

The U.S. Supreme Court observed in *Troxel v. Granville*, 530 U.S.

57, 65 (2000) that:

The Fourteenth Amendment provides that no State shall “deprive any person of life, liberty, or property, without due process of law.” We have long recognized that the Amendment’s Due Process Clause, like its Fifth Amendment counterpart, “guarantees more than fair process.”

There is no fair process when there is absolutely no process, method, or worksheet attachment to fairly apportion child support in shared residential custody households. When the total child support obligation is 100% apportioned to the lower income parent in 87.6% of all significantly shared (more than 25% with both parents) residential custody cases, which is also a 51.6% majority of all custody cases, a significant constitutional due process issue exists that impacts the majority of all family law cases involving custody in Washington state.

**5. A mere difference in income between parents, no matter how large, does not provide a sufficient reason to refuse a residential credit deviation to 50/50 families.**

“Mere difference in income, no matter how large, is not sufficient

basis for such a deviation.” *In re Marriage of Holmes*, 128 Wn. App. 727, 117 P.3d 370 (2005). In *Holmes*, the primary custodial father with \$125 million in assets and \$620,000 monthly net income was found to spend \$636 monthly for support of his son in his household (\$2,460 total support minus \$1,438 for private school and \$386 for health costs). The non-custodial mother had \$1 million in assets, \$2,051 of monthly net investment income, imputed income of another \$2,051, and sought approximately \$7,000 per month from the father (after subtracting private school expenses) to fund what father called “an excessively indulgent lifestyle” and “fund disruptive legislation”.

In the *Holmes* case, the father’s income was 151 times greater than the mother’s, and father’s net assets were 125 times larger. In spite of this difference in wealth, he was not ordered to maintain a \$7,000 per month child support payment that provides 11 times the resources at mother’s non-custodial residence than the \$636 spent at father’s custodial residence.

In this case, apportioning \$2,880 of support to Wendy via the most restrictive order just because James earns more is not a sufficient reason to deny a residential credit deviation, especially when Wendy’s net assets are approximately double James’ per their December 2019 financial declarations. By net worth and cash flow, James is the economically disadvantaged parent living in a financially destabilized household.

**6. The vagueness doctrine applies to the denial of residential credit due to a “difference of incomes” or “insufficient resources”.**

“Vagueness statutes thus carry three dangers: the absence of fair warning, the impermissible delegation of discretion, and the undue inhibition of the legitimate exercise of a constitutional right.” *Alsager v. District Court of Polk Cty., Iowa*, 406 F. Supp. 10 (S.D. Iowa 1975)

There is no fair warning for what James’ child support payment will be because residential credit depends upon the discretion of a court that makes decisions without the benefit of an Attachment for Residential Sharing Adjustment form to calculate the least restrictive child support order as a starting point. For 50/50 and other significantly shared residential families, the court provides no fair warning for what the least restrictive or narrowly tailored child support order would amount to.

The impermissible delegation of discretion can be seen in the 87.6% residential credit deviation denial rate that results from the state’s ability to receive more Federal money from the most restrictive child support orders than the least restrictive orders. The 2016 Residential Time Summary Report and 2018 Child Support Order Review analysis James provided in section A.6 of his Appellate Brief shows that 58.9% of all custody cases in Washington State involve shared parenting (both parents having a minimum of 25% residential time) but only 7.3% of custody

cases actually receive a residential credit deviation. A 51.6% majority of all custody cases are ordered to pay the most restrictive order.

A denial of residential credit results in the undue inhibition of the legitimate exercise of a constitutional right. The U.S. Supreme Court held:

“The liberty interest at issue in this case – the interest of parents in the care, custody, and control of their children – is perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in *Meyer v. Nebraska*, (1923), we held that the “liberty” protected by the Due Process Clause includes the right of parents to “establish a home and bring up children” and “to control the education of their own. Two years later, in *Peirce v. Society of Sisters*, (1925), we again held that the “liberty of parents and guardians includes the right “to direct the upbringing, education of children under their control.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000)

A denial of residential credit creates an undue burden for the father to equally support the children with a \$0 apportionment of child support to his household while the mother receives the entire \$2,880. The court’s decision in 2017 to deny residential credit has cost the children \$35,000 being saved for them in an educational savings account, and has directly interfered with James’ liberty interest to care for and control the education of his children. Forcing James to pay 122% of the maximum basic support obligation has destabilized his household finances even before the cost of litigation is factored in, resulted in a significant wealth gap of 2:1 between the now significantly wealthier mother and James, eliminated any college savings for the children, and resulted in a decade’s worth of conflict.

“It must be recognized, of course, that a domestic relations proceeding in and of itself can constitute state intervention that is so disruptive of the parent-child relationship that the constitutional right of a custodial parent to make certain basic determinations for the child’s welfare becomes implicated. The best interests of the child standard have at times been criticized as indeterminate, leading to unpredictable results.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000)

It is not within the province of the state to make significant decisions concerning the finances of children merely because it could make a ‘better’ decision. The state may believe it is in the best interests of the children to increase the transfer payment to the mother by \$1,440 per month by denying residential credit, but it infringes upon the father’s constitutionally protected liberty interests. “A desirable end may not be promoted by prohibited means.” *Meyer v. Nebraska*, 262 U.S. 390, (1923)

**7. A denial of residential credit does not equally protect the children when \$0 is apportioned to a 50/50 custodial parent’s household.**

The \$0 apportionment of support to James’ household has provided absolutely zero protection to his household since support payments began in June 2010. The full \$2,880 apportioned to Wendy’s household provides all the protection of the maximum support obligation for two children that she only has half of the time. Wendy has never actually had to show how \$2,880 monthly is spent on the basic support obligation for the children, yet her \$4,000 household monthly budget is supported 72% through a \$2,880 of child support apportionment for two

children in public school with no health issues. James' household is being denied the equal protection of the laws under the Fourteenth Amendment.

**8. The pro se appellant's constitutional arguments should be considered even though not all RAP requirements were strictly adhered to.**

James, the pro se appellant, without assistance of counsel, unschooled in law and requesting the court to accept direction from *Haines v. Kerner*, 404 U.S. 519 (1972), *Boag v. MacDougall*, 545 US 360 (1982), *Puckett v. Cox*, 456 F2d 233 (1972 Sixth Circuit USCA), wherein the court has directed those who are unschooled in law making pleadings shall have the court look to the substance of the pleadings rather than the form. Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers. *Maty v. Grasselli Chemical Co.*, 303 U.S. 197 (1938), *B. Platsky v. CIA*, 953 F.2d 25, 26 28 (2nd Cir. 1991), "Court errs if court dismisses pro se litigant without instruction of how pleadings are deficient and how to repair pleadings."

**9. Constitutional limits apply to child support orders submitted by the State of Washington for Federal reimbursement under the Social Security Act.**

"It cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 65 (2000)

As Justice Brandeis joined by Justice Holmes observed:

“despite arguments to the contrary which had seemed to me persuasive, it is settled that the due process clause of the Fourteenth Amendment applies to matters of substantive law as well as to matters of procedure. Thus all fundamental rights comprised within the term liberty are protected by the Federal Constitution from invasion by the States.” *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 1992

The state must order the least restrictive or a narrowly tailored child support order whenever possible for it to pass Constitutional muster.

**There is no exception to the Constitution for family court orders.**

#### **F. Conclusion**

Approximately 12,000 Washington state families with kids divorce every year<sup>2</sup> and 51.6% of these families must suffer the injustice of systemic constitutional violations. Denying a review of this case to address these violations would be an abuse of discretion by the Supreme Court. Equally protecting the fundamental liberty interests of these parents and reducing conflict in their families is more important than the state’s financial interest in Federal child support incentive payments.

The Supreme Court should order the Administrative Office of the Courts to accept pro se litigant’s Attachment for Residential Schedule

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<sup>2</sup><https://www.doh.wa.gov/DataandStatisticalReports/HealthStatistics/Divorce/DivorceTablesbyYear>



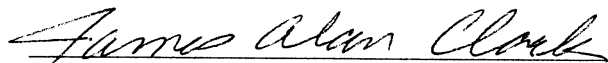
Adjustment or to publish their own version. The Supreme Court should address the constitutional violations that occur when residential credit is denied and the most restrictive child support orders are entered that do not pass constitutional muster. Ensuring court orders are predictably fair (constitutionally least restrictive) will significantly help to reduce the incentive to litigate and reduce family conflict. Once residential credit apportions equal support to equally protect the children at both parental households, the court's 'best interest' of how to spend the next \$1,440 of parental income is *de minimis* to the parent's fundamental liberty rights.

The Washington State Supreme Court has a constitutional duty to guide the courts to create constitutional orders. As the U.S. Supreme Court issued long ago, "Illegitimate and unconstitutional practices get their first footing . . . by silent approaches and slight deviations from legal modes of procedure. . . . It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachment thereon."

*Monongabela Nav. Co. v. United States, 148 U.S. 312, 325 (1893).*

**DATED** this 30th day of May, 2020.

Respectfully submitted,



Signature

James Alan Clark, Pro Se

**APPENDIX A – Court of Appeals Decision**

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

In re the Marriage of

JAMES ALAN CLARK,

Appellant,

v.

WENDY KRISTINE CLARK,

Respondent.

No. 79424-8-I

DIVISION ONE

UNPUBLISHED OPINION

FILED: January 13, 2020

ANDRUS, J. — The trial court denied James Clark's petition to modify his child support obligation based on a reduction of employment hours and income. His appeal is largely focused on arguments that he failed to preserve for appeal. To the extent he challenges the merits of the court's decision on his petition to modify, we conclude that the trial court did not abuse its discretion and affirm.

FACTS

James and Wendy Clark dissolved their marriage in 2011.<sup>1</sup> They have two children, who were 6 and 8 years old at the time of the dissolution. The trial court entered agreed orders that equally allocated residential time with the children and apportioned the child support obligation according to the standard

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<sup>1</sup> Some of the factual background is derived from this court's recent unpublished decision resolving James's appeal of a 2017 order entered earlier in this proceeding. See Clark v. Clark, No. 77253-8-I (Wash. Ct. App. June 11, 2018) (unpublished) <http://www.courts.wa.gov/opinions/pdf/772538.pdf>. As in our prior opinion, because the parties share the same last name, we refer to them by first name for clarity.

child support calculation based on each parent's proportionate share of the combined income.<sup>2</sup>

Approximately one year after the final orders were entered, James began multiple attempts to reduce his child support obligation, seeking to deviate from the standard child support calculation based on the substantial amount of time the children reside in his household. See RCW 26.19.075(1)(d).<sup>3</sup> The court rejected these requests.

In 2014, after the court had denied two petitions to reduce support and awarded attorney fees to Wendy in connection with one of those requests, James filed a petition to modify support. He again requested a deviation based on the shared residential schedule. A court commissioner denied the motion, observing that a deviation for residential credit is discretionary and generally not warranted where there is a significant disparity in the parents' income. At the hearing on James's motion, the commissioner explained:

The bigger the differential in income, the less likely you are to get a residential credit, and the reason for that is because the household that has 50 percent of the time with the lower income is at an economic disadvantage in maintaining the life that these kids have . . .

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<sup>2</sup> The record on appeal does not include the final dissolution and child support orders entered in 2011, but James does not dispute that he agreed to an amount of child support that did not deviate from the standard calculation.

<sup>3</sup> RCW 26.19.075(1)(d) provides, in pertinent part:

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. . . .

The commissioner denied Wendy's fee request, but cautioned James that she would "absolutely" award fees if he filed another motion raising the same argument.

In 2017, James filed a petition to modify the parenting plan. This time, he proposed a slight increase in his residential time with the children, along with a reduction of child support. James described his proposal as a "college savings plan," which would allow him to set aside over \$1,000 per month for future postsecondary education expenses. While urging the court to dismiss James's petition, Wendy also sought an adjustment of child support, because it had been two years since entry of the previous order of support and one of the children had moved into a new age bracket. See RCW 26.09.170(6)(b) (allowing for adjustment after one year if a child is no longer in the age category upon which the support obligation is based).

A commissioner denied James's petition, describing it as a "cynical" and transparent attempt to further his own financial interests. The commissioner granted Wendy's requested adjustment and awarded her attorney fees. The superior court denied James's motion for revision and awarded additional attorney fees to Wendy. This court upheld the superior court's order on appeal. See Clark v. Clark, No. 77253-8-I (Wash. Ct. App. June 11, 2018) (unpublished) <http://www.courts.wa.gov/opinions/pdf/772538.pdf>.

The 2017 child support order required James to make a transfer payment of \$2,054 to Wendy based on his 72 percent proportional share of the combined income. The order states:

Father has requested [a] residential deviation which has been denied multiple times by the court due to disparity in income between the parties. Downward deviation for post-secondary support is untimely due to [the] age of the children.

While James's appeal was pending, he refused to pay the full amount of child support. As a result, on June 26, 2018, a court commissioner found James in contempt for failing to comply with the July 2017 support order. The court ordered him to pay the child support arrearage as well as attorney fees and costs of more than \$2,500 to Wendy.

On August 1, 2018, James filed the petition at issue in this appeal, seeking to modify child support based on an alleged substantial change of circumstances with respect to his employment and income. See RCW 26.09.170(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”). James also asserted that the current support order had been in place for at least a year and created a “severe economic hardship.” See RCW 26.09.170(6)(a) (support order may be modified if it has been in place for at least a year without a showing of substantially changed circumstances if the order creates a “severe economic hardship.”).

James explained that he had been involuntarily laid off by his employer, Northrop Grumman Corporation (Northrop), on July 26, 2018, and hired by a different company, Engineering Services Network (ESN), the following day. However, James stated that while he was reemployed at approximately the same hourly rate of pay, his new position at ESN was part-time. Consequently, he claimed his annual salary was reduced to approximately half of his 2017 income.

James stated that his part-time schedule would allow him to restart a consulting business he had operated in the past. While he predicted that it would take approximately a year for the new business to become profitable, James opined that developing his own business would ultimately increase his earning potential and said he could “picture roles in the company” for his children in the future. James argued that, as a result of his reduced income, there was no longer a substantial disparity between his income and Wendy’s. He believed that it was “long past time” for the court to award a residential credit under RCW 26.19.075(1)(d) in light of the parties’ equal residential time. Based on his projected new income, James claimed that his monthly child support obligation should be reduced to \$1,059.

Two months later, James sought a temporary order eliminating his child support transfer payment. He also reiterated his challenges to the 2017 child support order that had been recently affirmed on appeal, including his claims that the existing child support order was detrimental to the children because it prevented him from saving for their future educational expenses and that he was entitled to a residential credit deviation.

Wendy opposed modification, arguing that James’s decision to accept part-time employment was not a basis to modify the 2017 order. Wendy explained that Northrop, James’s employer for the preceding 13 years, historically issued layoff notices before its defense contract was renewed and then promptly rehired its employees after renewal. Wendy pointed out that James did not say whether he had been offered full-time employment and

observed that his latest motion represented his sixth attempt since 2011 to reduce child support.

James denied that he was voluntarily underemployed. He argued Wendy had no personal knowledge of the negotiations surrounding his 2018 layoff and rehiring, but at the same time, he provided no information to verify that he was not offered reemployment with Northrop or that he was not offered full-time employment at any rate of pay.

At the October 2018 hearing on his motion, James argued that the transfer payment required by the 2017 support order was neither sustainable nor equitable in light of his reduced income. But instead of elaborating on his employment options, James focused on the previously-litigated issue of a deviation based on residential credit. James said that his purpose, “[f]irst and foremost,” was to obtain a residential credit deviation. James claimed that any payment above \$1,440, which represented fifty percent of the total child support obligation, was “backdoor[]” maintenance. James also informed the commissioner that he had obtained all the credentials to become a “digital forensics expert witness,” and that he expected to substantially increase his income “within the next year.”

The commissioner denied the motion to modify, concluding there was no substantial change in circumstances to warrant modification of child support. The commissioner noted that James’s requests for a discretionary deviation based on residential credit had been previously denied based on a significant disparity in the parties’ incomes and that, since he planned to work full-time and



to expand his salary base in the near future, the disparity was not eliminated. The commissioner denied reconsideration and ordered James to pay Wendy approximately \$8,000 in attorney fees.

James filed a motion to revise the commissioner's ruling. Wendy then filed a motion seeking to declare James a vexatious litigant and to require that he post a bond before filing further pleadings seeking affirmative relief. She also requested attorney fees incurred in responding to James's motion to revise.

Following a hearing on both motions, the trial court denied James's motion to revise, based on a de novo review of the record before the commissioner, but granted Wendy's motion to declare James to be a vexatious litigant. The court entered an order placing limitations on James's ability, for a year, to file petitions or motions pertaining to child support. The court denied Wendy's request for attorney fees.

James appeals from the order denying revision and the order granting Wendy's motion to prevent vexatious litigation.

## ANALYSIS

### A. Constitutional Arguments

James primarily argues on appeal that he is entitled to a deviation from the standard calculation child support obligation. He claims that the failure to apply a deviation in a case of equally allocated residential time violates several constitutional principles, including substantive and procedural due process and equal protection. He also challenges the constitutionality of the statutory

provision governing residential credit deviations, RCW 26.19.075(1)(d), insofar as it does not require deviations in cases involving a 50/50 residential schedule.

But James did not argue below that a residential credit deviation was constitutionally required and did not challenge the constitutionality of RCW 26.19.075(1)(d). Under RAP 2.5(a), we generally do not entertain issues not raised in the trial court in order to encourage the efficient use of judicial resources. Rapid Settlements, Ltd. v. Symetra Life Ins. Co., 166 Wn. App. 683, 695, 271 P.3d 925 (2012).

RAP 2.5(a)(3) provides an exception to this rule. To determine whether to consider an unpreserved error under RAP 2.5(a)(3), we inquire whether (1) the error is truly of a constitutional magnitude and (2) whether it is manifest. An error is manifest when the asserted error has practical and identifiable consequences in the trial court. Aventis Pharmaceutical, Inc. v. State, 5 Wn. App. 2d 637, 650, 428 P.3d 389 (2018). Manifest error must be “obvious on the record,” and “unmistakable, evident, or indisputable.” State v. O’Hara, 167 Wn.2d 91, 100, 217 P.3d 756 (2009); State v. Lynn, 67 Wn. App. 339, 345, 835 P.2d 251 (1992).

James does not allege, much less establish, manifest constitutional error. His contention that RCW 26.19.075(1)(d) is unconstitutional is unsupported and conclusory. He provides no cogent argument or persuasive authority that supports his position that child support allocated in accordance with each parent’s proportionate share of the combined income is not narrowly tailored and does not advance a compelling state interest. See In re Custody of Smith, 137 Wn.2d 1, 14-15, 969 P.2d 21 (1998) (parental autonomy is a fundamental

liberty interest protected by the Fourteenth Amendment upon which the State may not intrude without a compelling interest and narrow tailoring). Rather than addressing the criteria of RAP 2.5(a)(3), James simply explains that he failed to raise the constitutional issues below because “due process arguments concerning errors of law belong in front of the appellate court.” Although James raises numerous and extensive constitutional arguments related to a deviation based on the shared residential schedule, he fails to make a plausible showing that the alleged error is manifest. We therefore decline to address James’s constitutional arguments.

B. Substantial Change in Circumstances

James argues the court below erred in denying his request to modify child support based on his alleged substantial change of circumstances. Washington courts have statutory and equitable powers to modify support orders. RCW 26.09.175; Pippins v. Jankelson, 110 Wn.2d 475, 478, 754 P.2d 105 (1988). As a general rule, courts must find a substantial change of circumstances before modifying a support order. RCW 26.09.170(5); Pippins, 110 Wn.2d 475.

“On a revision motion, a trial court reviews a commissioner’s ruling de novo based on the evidence and issues presented to the commissioner.” In re Marriage of Williams, 156 Wn. App. 22, 27, 232 P.3d 573 (2010). “When an appeal is taken from an order denying revision of a court commissioner’s decision, we review the superior court’s decision, not the commissioner’s.” Williams, 156 Wn. App. at 27. We review such an order for manifest abuse of

discretion. In re Marriage of Schumacher, 100 Wn. App. 208, 211, 997 P.2d 399 (2000). A trial court abuses its discretion if its decision is manifestly unreasonable, or is based on untenable grounds or an erroneous view of the law. In re Marriage of Scanlon, 109 Wn. App. 167, 174-75, 34 P.3d 877 (2001).

James contends that the court “ignored” his changed circumstances and reduced income. He also claims that the court failed to appreciate his need to “prioritize” the children by working less than full-time in order to fulfill his substantial caretaking responsibilities. But the denial of James’s motion does not, in and of itself, suggest that the court failed to consider his new circumstances. The record supports the conclusion that James was likely to experience only a temporary reduction in income and that he had no intention of relying solely on part-time income from ESN. According to James’s financial documents, his reported expenses, excluding child support, significantly exceeded his new income from ESN.<sup>4</sup> James conceded that part-time employment was “not a long term option” for him. He admitted it would be appropriate to credit him immediately with additional annual earnings generated by his new business of between \$18,000 and \$30,000. The court had a basis in the record for rejecting James’s argument that his employment status would lead to a significant reduction in his income.

James also did not establish that his salary reduction was unavoidable. He did not describe any specific efforts to secure full-time employment and did not specifically say whether he was offered full-time employment, or what, if any,

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<sup>4</sup> According to James’s financial declaration submitted in August 2018 in conjunction with his petition to modify support, at his new monthly income, his household would operate at a monthly deficit of approximately \$5,000.

offer his previous employer made. Instead, he vaguely asserted that the “layoff/rehire process can be brutal,” that managers he previously reported to had left, that his “program” was “in flux,” and that the “overall workload” was reduced. He provided very few details and nothing to substantiate his claim that, by accepting part-time hours, he had “saved his job.”

James also asserted below that he accepted reduced hours in order to meet the needs of his teenaged children. This assertion, however, is arguably inconsistent with his historical ability to work full-time and manage his parenting responsibilities and his contention that he needs the additional time to develop his own business. The record shows that the children have resided with James 50 percent of the time since 2011, and he apparently worked full-time throughout that 7-year period. And his stated intent was to devote his additional available hours, not to his children, but to developing a business. The court did not manifestly abuse its discretion in finding James’s arguments to be unconvincing. Because the court rejected James’s contention that there has been a substantial change in circumstances, it did not abuse its discretion in rejecting his request for a residential credit.

James cites In re Marriage of Payne, 82 Wn. App. 147, 916 P.2d 968 (1996), to argue that the court abused its discretion because his child support obligation is based on prior, not current, earnings. His reliance on Payne is misplaced. The father in Payne earned approximately \$600 less per month after he moved to Seattle to be closer to his daughter following the mother’s relocation. Payne, 82 Wn. App. at 151. We concluded the trial court did not err

in calculating the father's child support obligation based on his projected future income in Seattle, rather than his prior earnings, because to do otherwise would "unfairly penalize" him for moving. Id. In those circumstances, we deemed the father's slightly higher income from a previous position to be irrelevant. Payne is distinguishable because, unlike the case here, the change in income was not associated with probable voluntary reduced work hours, but a change in location and employer due to the other parent's relocation. See RCW 26.09.170(5)(b) ("An obligor's voluntary unemployment or voluntary underemployment, by itself, is not a substantial change of circumstances.")

James also cites Schumacher for the position that full-time employment need not always amount to 40 hours per week. But unlike the father in that case, James does not argue, here or below, that less than 40 hours should be considered full-time employment, in view of his work history, education, age, and other relevant factors. See Schumacher, 100 Wn. App. at 215.

Based on the record here, the trial court did not abuse its discretion in denying James's petition to modify the child support order.

### C. Vexatious Litigation Order

James also challenges the court's order placing temporary limitations on his ability to challenge the order of child support.

"[A] court may, in its discretion, place reasonable restrictions on any litigant who abuses the judicial process." See In re Marriage of Giordano, 57 Wn. App. 74, 78, 787 P.2d 51 (1990). Here, the court found that James had "engaged in a pattern of abusive litigation tactics that constitute vexatious

litigation regarding child support, particularly the issue of a residential credit.” The court noted that James’s “comments at oral argument support this finding.”<sup>5</sup> The court determined that it was “appropriate and necessary” to place restrictions on James’s ability to file future motions pertaining to child support. Specifically, the order prohibits James from filing any motions regarding child support within a year of the court’s December 11, 2018 order unless he is represented by a licensed attorney, or unless he either (1) posts a \$10,000 bond in the superior court registry prior to filing a petition or motion, or (2) obtains prior approval of a court commissioner before filing a new petition or motion.<sup>6</sup>

James does not challenge the finding that he engaged in “abusive litigation tactics that constitute vexatious litigation,” or otherwise challenge the sufficiency of the court’s findings. The only argument he raises with respect to the order is that he cannot be deemed a vexatious litigant because he complied with statutory requirements as to the timing of his June 2017 and August 2018 petitions. See RCW 26.09.170(6), (7). But James provides no authority or reasoned argument to support his position. As a general matter, we decline to address arguments that are unsupported by citation to authority or cogent argument. See RAP 10.3(a)(6); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

James does not challenge any of the specific restrictions or contend that the injunction was overly broad. Yurtis v. Phipps, 143 Wn. App. 680, 693,

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<sup>5</sup> The hearing on the motions was apparently not transcribed and a report of the proceeding is not included in the record on appeal.

<sup>6</sup> In these proceedings involving his 2018 petition, James has represented himself pro se, but it appears that he was represented by counsel earlier in the litigation.

181 P.3d 849 (2008) (courts must be careful not to impose overly comprehensive injunctions that restrict litigation). And he fails to mention critical facts about the scope of the order. The order was not a moratorium and set forth three separate means by which James could seek relief from child support prior to expiration of the order. See Giordano, 57 Wn. App. at 78 (no abuse of discretion where trial court's order restricting ability to file motions did not amount to a "total denial of access" to the court). James fails to establish that the court abused its discretion.

D. Attorney Fees

Wendy requests attorney fees on appeal, citing RAP 18.1, RCW 26.09.140, and RAP 18.9 based on her need and James's ability to pay, principles of intransigence, and a frivolous appeal.

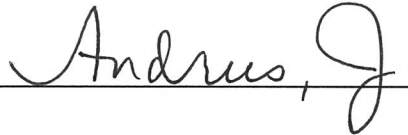
This court has the discretion to award attorney fees on appeal under RAP 18.1(a) if authorized by applicable law. RCW 26.09.140 allows the appellate court, in its discretion, and based on consideration of the "financial resources" of both parties, to order a party to pay the attorney fees of the other party in cases governed by chapter 26.09 RCW. The court may also award fees based on conduct that may be characterized as "foot-dragging" or "obstructionist." MacKenzie v. Barthol, 142 Wn. App. 235, 242, 173 P.3d 980 (2007); Eide v. Eide, 1 Wn. App. 440, 445, 462 P.2d 562 (1969). And under RAP 18.9, the appellate court may impose fees against a party who files a frivolous appeal. "An appeal is frivolous if the appellate court is convinced that the appeal presents no debatable issues upon which reasonable minds could differ and is so lacking in



merit that there is no possibility of reversal.” In re Marriage of Foley, 84 Wn. App. 839, 847, 930 P.2d 929 (1997).


We conclude that attorney fees are warranted under RAP 18.9 because James’s appeal lacks merit. He largely focused on issues not properly before us, did not assign error to any of the key factual findings, failed to brief in any meaningful way the basis for reversing the finding that he is a vexatious litigant, and presented no debatable issues for review. We therefore grant Wendy’s request for attorney fees and costs under RAP 18.9, subject to her compliance with RAP 18.1.

Affirmed.

  
\_\_\_\_\_

WE CONCUR:

  
\_\_\_\_\_

  
\_\_\_\_\_

**APPENDIX B – Most restrictive Temporary Child Support Order  
ordered after arguing Constitutional limits to trial court on 4/28/2020**

10-3-01158-9  
TMORS 317  
Temporary Order of Child Support  
8110892



FILED  
2001 APR 20 PM 3:20  
SNOHOMISH COUNTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SNOHOMISH

In re the Marriage of:  
JAMES ALAN CLARK,  
Petitioner,  
and  
WENDY KRISTINE CLARK,  
Respondent.

Case No.: 10-3-01158-9

TEMPORARY CHILD SUPPORT ORDER

Clerk's action required: WSSR

PROPOSED

1. Money Judgment Summary

The issue of any past due child support, medical support and other expenses or interest owed is reserved for arbitration.

Summarize any money judgments from section 22 in the table below.

Judgment for	Debtor's name (person who must pay money)	Creditor's name (person who must be paid)	Amount	Interest
Past due child support from _____ to _____	Reserved for arbitration		\$	\$
Past due medical support from _____ to _____	Reserved for arbitration		\$	\$
Past due children's exp. from _____ to _____	Reserved for arbitration		\$	\$

TEMPORARY CHILD SUPPORT ORDER - 1

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WSSR

Attorney's Fees	James Clark	Wendy Clark	\$2,500.00	\$
Yearly Interest Rate for Attorney's Fees: 12%.				
Petitioner: James Clark, Pro Se				
Lawyer: Karen D. Moore represents Wendy Clark				

➤ **Findings and Orders**

2. The court orders child support as part of this family law case. This is a temporary order.
3. The *Child Support Schedule Worksheets* attached or filed separately are approved by the court and made part of this Order.
4. **Parents' contact and employment information**

Each parent must fill out and file with the court a *Confidential Information* form (FL All Family 001) including personal identifying information, mailing address, home address, and employer contact information.

**Important!** If you move or get a new job any time while support is still owed, you must:

- Notify the Support Registry, and
- Fill out and file an updated *Confidential Information* form with the court.

**Warning!** Any notice of a child support action delivered to the last address you provided on the *Confidential Information* form will be considered adequate notice, if the party trying to serve you has shown diligent efforts to locate you.

5. **Parents' Income**

Parent: James Clark	Parent: Wendy Clark
Net monthly income \$10,466.45. (line 3 of the Worksheets) This income is this parent's actual income (after any exclusions approved below).	Net monthly income \$4,653.85. (line 3 of the Worksheets) This income is this parent's actual income (after any exclusions approved below).
Does this parent have income from overtime or a 2 <sup>nd</sup> job? No.	Does this parent have income from overtime or a 2 <sup>nd</sup> job? No.

1 **6. Imputed Income**

2 *To calculate child support, the court may impute income to a parent:*

- 3 *▪ whose income is unknown, or*
- 4 *▪ who the Court finds is unemployed or under-employed by choice.*

5 *Imputed income is not actual income. It is an assigned amount the court finds a parent could or should be earning. (RCW 26.19.071(6))*

6 <b>Parent: James Clark</b>	<b>Parent: Wendy Clark</b>
Does not apply. This parent's actual income is used.	Does not apply. This parent's actual income is used.

7 **7. Limits affecting the monthly child support amount**

8 The monthly amount has been affected by:

9 **Combined Monthly Net Income over \$12,000.** Together the parents earn more than \$12,000 per month (*Worksheets* line 4). The child support amount is the presumptive amount from the economic table.

11 **8. Standard Calculation**

12 <i>Parent Name</i>	<i>Standard calculation</i>
	<i>Worksheets line 17</i>
13 <i>James Clark</i>	\$1,547.32
14 <i>Wendy Clark</i>	\$832.68

15 **9. Deviation from standard calculation**

16 Should the monthly child support amount be different from the standard calculation when determining temporary orders?

17 **No** - The monthly child support amount ordered in section 10 is the same as the standard calculation listed in section 8 because there is no good reason to approve the deviation requested by James Clark. The father has requested a residential deviation which has been denied multiple times by the court due to the disparity in income between the parties.

20 The father's request for a residential credit to be reserved for arbitration.

1 **10. Monthly child support amount (transfer payment)**

2 After considering the standard calculation in section 8, and whether or not to apply a  
3 deviation in section 9, the court orders the following monthly child support amount  
(transfer payment).

4 James Clark must pay child support to Wendy Clark each month as follows for the  
5 children listed below:

Child's Name	Age	Amount
1. Emma	17	\$773.66
2. Bryce	15	\$773.66
<b>Total monthly child support amount:</b>		<b>\$1,547.32</b>

8 **11. Starting date and payment schedule.**

9 The monthly child support amount must be paid starting May 2020 on the following  
10 payment schedule in two payments each month: ½ by the 5<sup>th</sup> and ½ by the 20<sup>th</sup> day of the  
11 month.

12 **12. Step Increase (for modifications or adjustments only)**

13 Does not apply.

14 **13. Periodic Adjustment**

15 Child support may be changed according to state law. The Court is not ordering a specific  
16 periodic adjustment schedule below.

17 **14. Payment Method (*check either Registry or Direct Pay*)**

18 **Registry** – Send payment to the Washington State Support Registry. The Division of  
19 Child Support (DCS) will forward the payments to the person owed support and keep  
20 records of all payments.

21 Address for payment: Washington State Support Registry  
22 PO Box 45868, Olympia, WA 98504  
23 Phone number/s: 1 (800) 922-4306 or 1 (800) 442-5437

24 *Important! If you are ordered to send your support payments to the Washington State  
Support Registry, and you pay some other person or organization, you will not get  
credit for your payment.*

TEMPORARY CHILD SUPPORT ORDER - 4

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1                   **DCS Enforcement (if Registry is checked above):**

2                   DCS will enforce this order because one of the parties has asked for DCS services  
3                   by signing the application statement at the end of this order (above the *Warnings*).

4                   **15. Enforcement through income withholding (garnishment)**

5                   DCS or the person owed support can collect the support owed from the wages, earnings,  
6                   assets or benefits of the parent who owes support, and can enforce liens against real or  
7                   personal property as allowed by any state's child support laws without notice to the  
8                   parent who owes the support.

9                   *If this order is not being enforced by DCS and the person owed support wants to have*  
10                  *support paid directly from the employer, the person owed support must ask the court to*  
11                  *sign a separate wage assignment order requiring the employer to withhold wages and*  
12                  *make payments. (Chapter 26.18 RCW.)*

13                  Income withholding may be delayed until a payment becomes past due if the court finds  
14                  good reason to delay.

15                  Does not apply. There is no good reason to delay income withholding.

16                  **16. End date for support**

17                  Support must be paid for each child until the child turns 18 or is no longer enrolled in  
18                  high school, whichever happens last, unless the court makes a different order in section  
19                  17.

20                  **17. Post-secondary educational support (for college or vocational school)**

21                  Reserved for Bryce – A parent or non-parent custodian may ask the court for post-  
22                  secondary educational support at a later date without showing a substantial change of  
23                  circumstances by filing a *Petition to Modify Child Support Order* (form FL Modify 501).  
24                  The *Petition* must be filed *before* child support ends as listed in section 16.

                  Granted for Emma – The parents must pay for Emma's post-secondary educational  
                  support. Post-secondary educational support may include support for the period after high  
                  school and before college or vocational school begins. The amount or percentage each  
                  person must pay will be reserved for arbitration.

1 **18. Tax Issues**

2 *Important! Although the personal tax exemptions are currently suspended under federal law through tax year*  
3 *2025, other tax benefits may flow from claiming a child as dependent.*

4 The parties have the right to claim the children as their dependents for purposes of personal  
5 tax exemptions and associated tax credits on their tax forms as follows

6 Alternating – James Clark has the right to claim Emma for even years and Bryce  
7 in odd years, provided he is current in all support obligations as of December 31<sup>st</sup> of  
8 the year in which he is to take the exemption, otherwise Wendy Clark has the right  
9 to claim both children for that year. The mother, Wendy Clark, may claim Emma in  
10 odd years and Bryce in even years.

11 When only the exemption for Bryce remains, the parties shall alternate the  
12 exemption, with James Clark receiving in odd years and Wendy Clark receiving in  
13 even years.

14 For tax years when a non-custodial parent has the right to claim the children, the  
15 parents must cooperate to fill out and submit IRS Form 8332 in a timely manner.

16 In the years they claim a child as a dependent, the parents may receive any available  
17 tax exemption and/or tax credit for that child.

18 **19. Medical Support**

19 *Important! Read the Medical Support Warnings at the end of this order. Medical Support*  
20 *includes health insurance (both public and private) and cash payments towards*  
21 *premiums and uninsured medical expenses.*

22 **Private health insurance ordered.** James Clark must pay the premium to provide health  
23 insurance coverage for the children. The court has considered the needs of the children,  
24 the cost and extent of coverage, and the accessibility of coverage.

The other parent must pay her proportional share\* of the premium paid. Health  
insurance premiums are included on the *Worksheets* (line 14). No separate  
payment is needed.

\* *Proportional share is each parent's percentage share of the combined net  
income from line 6 of the Child Support Schedule Worksheets.*

TEMPORARY CHILD SUPPORT ORDER - 6

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1 *A parent cannot be ordered to pay an amount towards health care coverage*  
 2 *premiums that is more than 25% of his/her basic support obligation (Worksheets,*  
 3 *line 19) unless the court finds it is in the best interest of the children.*

4 **20. Health care coverage if circumstances change or court has not ordered**

5 If the parties' circumstances change, or if the court is not ordering how health care  
 6 coverage must be provided for the children in section 19:

- 7 ■ A parent, non-parent custodian, or DCS can enforce medical support requirement.
- 8 ■ If a parent does not provide proof of accessible health care coverage (coverage  
 9 that can be used for the children's primary care), that parent must:
  - 10 • Get (or keep) insurance through his/her work or union, unless the  
 11 insurance costs more than 25% of his/her basic support obligation (line 19  
 12 of the *Worksheets*),
  - 13 • Pay his/her share of the other parent's monthly premium up to 25% of  
 14 his/her basic support obligation (line 19 of the *Worksheets*), or
  - 15 • Pay his/her share of the monthly cost of any public health care coverage,  
 16 such as Apple Health or Medicaid, which is assigned to the state.

17 **21. Children's expenses not included in the monthly child support amount**

18 **Uninsured medical expenses** – Each parent is responsible for a share of uninsured medical  
 19 expenses as ordered below. Uninsured medical expenses include premiums, co-pays,  
 20 deductibles, and other health care costs not paid by health care coverage.

Children's Expenses for:	James Clark pays monthly	Wendy Clark pays monthly	Make payments to:	
			Person who pays the expense	Service Provider
Uninsured medical expenses	Proportional Share*	Proportional Share*	[X] or the	[X]

21 \* *Proportional Share is each parent's percentage share of the combined net income from*  
 22 *line 6 of the Child Support Schedule Worksheets.*

1 **Other shared expenses**

2 The parents will share the cost for the expenses listed below:

Children's Expenses for:	James Clark pays monthly	Wendy Clark pays monthly	Make payments to:	
			Person who pays the expense	Service Provider
Agreed Educational Expenses	Proportional Share*	Proportional Share*	[X] or the	[X]
Agreed Extracurricular Activity Expenses	Proportional Share*	Proportional Share*	[X] or the	[X]

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11 \* *Proportional Share is each parent's percentage share of the combined net income from line 6 of the Child Support Schedule Worksheets.*

12 Uninsured health care expenses and other shared expenses are to be paid within thirty (30) days of receipt of verification of the expense.

13  
14 The issue of payment for the children's vehicle insurance, rowing expenses, cellphones, Kennelly Keys, band fees, and ORCA expenses to be reserved for arbitration.

15 **A person receiving support can ask DCS to collect:**

- 16 ■ expenses owed directly to him/her.
- 17 ■ reimbursement for expenses the person providing support was ordered to pay.
- 18 ■ an order for a money judgment that s/he got from the court.

19 **22. Past due child support, medical support and other expenses**

20  
21 The issue of any past due child support, medical support and other expenses or interest owed is reserved for arbitration.

1 The court orders the following money judgment (summarized in section 1 above):

2

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Judgment for	Debtor's name (person who must pay money)	Creditor's name (person who must be paid)	Amount	Interest
Past due child support from _____ to _____	Reserved for arbitration		\$	\$
Past due medical support from _____ to _____	Reserved for arbitration		\$	\$
Past due children's exp. from _____ to _____	Reserved for arbitration		\$	\$
Attorney's Fees	James Clark	Wendy Clark	\$2,500.00	\$

9 The interest rate for Attorney's Fees judgment is 12%.

10 23. **Overpayment caused by change**

11 Does not apply.

12 24. **Other Orders**

13 All of the *Warnings* below are required by law and are incorporated and made part of this  
14 order.

- 15 a. **Support Registry/Health Insurance.** A party required to make payments to the  
16 Washington State Support Registry shall keep the registry informed whether he or  
17 she has access to health insurance coverage at reasonable cost and, if so, to  
18 provide the health insurance policy information.
- 19 b. **Support Registry/Accounting.** Any time the Division of Child Support is  
20 providing support enforcement services under RCW 26.23.045, or if a party is  
21 applying for support enforcement services by signing the application form on the  
22 bottom of the support order, the receiving parent might be required to submit an  
23 accounting of how the support, including any cash medical support, is being spent  
24 to benefit the child(ren).

TEMPORARY CHILD SUPPORT ORDER - 9

**BREWE LAYMAN P.S.**  
Attorneys at Law

P.O. Box 488  
Everett, Washington 98206-0488  
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(425) 252-9055 Fax  
www.brewelaw.com

1 Ordered.

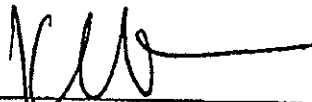
2 DONE IN OPEN COURT this 28 day of April, 2020.

3 

4 JUDGE/COURT COMMISSIONER

5 This document is presented by Respondent's Copy Received:  
6 attorney:

7 BREWE LAYMAN P.S.  
Attorneys at Law

8   
9 By \_\_\_\_\_  
10 Karen D. Moore, WSBA 21328  
Attorney for Respondent

\_\_\_\_\_   
James Clark  
Petitioner/Pro Se

11  
12 Wendy Kristine Clark  
13 Wendy Clark  
Respondent

14 Parent or Non-Parent Custodian applies for DCS enforcement services:

15 I ask the Division of Child Support (DCS) to enforce this order. I understand that DCS will keep  
16 \$35 each year (\$25 before 10/1/2019) as a fee if DCS collects more than \$550 (\$500 before  
10/1/2019), unless I ask to be excused from paying this fee in advance. (You may call DCS at 1-  
800-442-5437. DCS will not charge a fee if you have ever received TANF, tribal TANF, or  
AFDC.)

17 Wendy Kristine Clark  
18 Parent or Non-Parent Custodian signs here  
(lawyer cannot sign for party)

Wendy Kristine Clark      4/23/20  
Print name      Date

23 TEMPORARY CHILD SUPPORT ORDER - 10

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1  
2 **All the warnings below are required by law and are part of the order. Do not remove.**

3 **Warnings!**

4 **If you don't follow this child support order...**

- 5 ■ DOL or other licensing agencies may deny, suspend, or refuse to renew your licenses, including your driver's license and business or professional licenses, and
- 6 ■ Dept. of Fish and Wildlife may suspend or refuse to issue your fishing and hunting licenses and you may not be able to get permits. (RCW 74.20A.320)

4 **If you receive child support...**

You may have to:

- 5 ■ Document how that support and any cash received for the children's health care was spent.
- 6 ■ Repay the other parent for any day care or special expenses included in the support if you didn't actually have those expenses. (RCW 26.19.080)

9 **Medical Support Warnings!**

10 **The parents must keep the Support Registry informed whether or not they have access to health care coverage for the children at a reasonable cost, and provide the policy information for any such coverage.**

12 \* \* \*

12 **If you are ordered to provide children's health care coverage...**

13 You have 20 days from the date of this order to send:

- 14 ■ proof that the children are covered, or
- 14 ■ proof that health care coverage is not available as ordered.

15 Send your proof to the other parent or to the Support Registry (if your payments go there).

16 If you do not provide proof of health care coverage:

- 17 ■ The other parent or the support agency may contact your employer or union, without notifying you, to ask for direct enforcement of this order (RCW 26.18.170), and
- 18 ■ The other parent may:
  - 19 • Ask the Division of Child Support (DCS) for help,
  - 19 • Ask the court for a contempt order, or
  - 19 • File a Petition in court.

20 **Don't cancel your employer or union health insurance for your children unless the court approves or your job ends and you no longer qualify for insurance as ordered in section 19.**

22 If an insurer sends you payment for a medical provider's service:

23 **TEMPORARY CHILD SUPPORT ORDER - 11**

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- 1   ▪    you must send it to the medical provider if the provider has not been paid; or
- 2   ▪    you must send the payment to whoever paid the provider if someone else paid the  
   provider; or
- 3   ▪    you may keep the payment if you paid the provider.

4   If the children have public health care coverage, the state can make you pay for the cost of the  
   monthly premium.

5   Always inform the Support Registry and any parent if your access to health care coverage changes  
   or ends.

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TEMPORARY CHILD SUPPORT ORDER - 12

**BREWE LAYMAN P.S.**  
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2022 MAR 23 PM 3: 20

10-3-01158-9  
CSW 318  
Child Support Worksheet  
8110884



### Washington State Child Support Schedule Worksheets

Proposed by [ ]

State of WA (CSWP)

Or  Signed by the Judicial/Reviewing Officer. (CSW)

County Snohomish

Case No. 10-3-01158-9

Child/ren and Age/s: Bryce, 15; Emma, 17

Parents' names: James Clark

Wendy Clark

(Column 1)

(Column 2)

	JAMES	WENDY
<b>Part I: Income</b> (see Instructions, page 6)		
<b>1. Gross Monthly Income</b>		
a. Wages and Salaries	\$14,558.27	\$5,712.23
b. Interest and Dividend Income	-	-
c. Business Income	-	-
d. Maintenance Received	-	-
e. Other Income	-	-
f. Imputed Income	-	\$149.17
g. Total Gross Monthly Income (add lines 1a through 1f)	\$14,558.27	\$5,861.40
<b>2. Monthly Deductions from Gross Income</b>		
a. Income Taxes (Federal and State) Tax Year: 2020	\$2,752.61	\$544.67
b. FICA (Soc. Sec. + Medicare)/Self-Employment Taxes	\$922.54	\$448.40
c. State Industrial Insurance Deductions	-	\$14.48
d. Mandatory Union/Professional Dues	-	-
e. Mandatory Pension Plan Payments	-	-
f. Voluntary Retirement Contributions	\$416.87	\$200.00
g. Maintenance Paid	-	-
h. Normal Business Expenses	-	-
i. Total Deductions from Gross Income (add lines 2a through 2h)	\$4,091.82	\$1,207.55
<b>3. Monthly Net Income</b> (line 1g minus 2i)	\$10,466.45	\$4,653.85
<b>4. Combined Monthly Net Income</b> (add both parents' monthly net incomes from line 3)	\$15,120.30	
<b>5. Basic Child Support Obligation</b> Number of children: 2 x \$1190.00 per child (enter total amount in box →)	\$2,380.00	
<b>6. Proportional Share of Income</b> (divide line 3 by line 4 for each parent)	.692	.308

WSCSS-Worksheets - Mandatory (CSW/CSWP) 01/2019 Page 1 of 5

WSSR

	JAMES	WENDY
<b>Part II: Basic Child Support Obligation</b> (see Instructions, page 7)		
7. Each Parent's Basic Child Support Obligation without consideration of low income limitations (Each parent's Line 6 times Line 5.)	\$1,646.96	\$733.04
8. Calculating low income limitations: Fill in only those that apply.		
Self-Support Reserve: (125% of the federal poverty guideline for a one-person family.)	\$1,329.00	
a. Is combined Net Income Less Than \$1,000? If yes, for each parent enter the presumptive \$50 per child.	-	-
b. Is Monthly Net Income Less Than Self-Support Reserve? If yes, for that parent enter the presumptive \$50 per child.	-	-
c. Is Monthly Net Income equal to or more than Self-Support Reserve? If yes, for each parent subtract the self-support reserve from line 3. If that amount is less than line 7, enter that amount or the presumptive \$50 per child, whichever is greater.	-	-
9. Each parent's basic child support obligation after calculating applicable limitations. For each parent, enter the lowest amount from line 7, 8a - 8c, but not less than the presumptive \$50 per child.	\$1,646.96	\$733.04
<b>Part III: Health Care, Day Care, and Special Child Rearing Expenses</b> (see Instructions, page 8)		
10. Health Care Expenses		
a. Monthly Health Insurance Premiums Paid for Child(ren)	\$268.01	-
b. Uninsured Monthly Health Care Expenses Paid for Child(ren)	-	-
c. Total Monthly Health Care Expenses (line 10a plus line 10b)	\$268.01	-
d. Combined Monthly Health Care Expenses (add both parents' totals from line 10c)	\$268.01	
11. Day Care and Special Expenses		
a. Day Care Expenses	-	-
b. Education Expenses	-	-
c. Long Distance Transportation Expenses	-	-
d. Other Special Expenses (describe)		
Children's Dental Insurance Premiums Paid for Children	\$55.50	-
	-	-
	-	-
e. Total Day Care and Special Expenses (Add lines 11a through 11d)	\$55.50	-
12. Combined Monthly Total Day Care and Special Expenses (add both parents' day care and special expenses from line 11e)	\$55.50	
13. Total Health Care, Day Care, and Special Expenses (line 10d plus line 12)	\$323.51	
14. Each Parent's Obligation for Health Care, Day Care, and Special Expenses (multiply each number on line 6 by line 13)	\$223.87	\$99.64
<b>Part IV: Gross Child Support Obligation</b>		
15. Gross Child Support Obligation (line 9 plus line 14)	\$1,870.83	\$832.68



	JAMES	WENDY
<b>Part V: Child Support Credits</b> (see Instructions, page 9)		
<b>16. Child Support Credits</b>		
a. Monthly Health Care Expenses Credit	\$268.01	-
b. Day Care and Special Expenses Credit	\$55.50	-
c. Other Ordinary Expenses Credit (describe)	-	-
	-	-
d. Total Support Credits (add lines 16a through 16c)	\$323.51	-
<b>Part VI: Standard Calculation/Presumptive Transfer Payment</b> (see Instructions, page 9)		
17. Standard Calculation (line 15 minus line 16d or \$50 per child whichever is greater)	\$1,547.32	\$832.88
<b>Part VII: Additional Informational Calculations</b>		
18. 45% of each parent's net income from line 3 (.45 x amount from line 3 for each parent)	\$4,709.90	\$2,094.23
19. 25% of each parent's basic support obligation from line 9 (.25 x amount from line 9 for each parent)	\$411.74	\$183.26
<b>Part VIII: Additional Factors for Consideration</b> (see Instructions, page 9)		
<b>20. Household Assets</b> (List the estimated present value of all major household assets.)		
a. Real Estate	-	-
b. Investments	-	-
c. Vehicles and Boats	-	-
d. Bank Accounts and Cash	-	-
e. Retirement Accounts	-	-
f. Other: (describe)	-	-
	-	-
	-	-
	-	-
<b>21. Household Debt</b> (List liens against household assets, extraordinary debt.)		
a.	-	-
b.	-	-
c.	-	-
d.	-	-
e.	-	-
f.	-	-
<b>22. Other Household Income</b>		
a. Income Of Current Spouse or Domestic Partner (if not the other parent of this action)		
Name	-	-
Name	-	-
b. Income Of Other Adults in Household		
Name	-	-
Name	-	-



Other Factors For Consideration (continued) (attach additional pages as necessary)

**Signature and Dates**

I declare, under penalty of perjury under the laws of the State of Washington, the information contained in these Worksheets is complete, true, and correct.

*Wendy Kristine Clark*

Parent's Signature (Column 1)

Parent's Signature (Column 2)

4/23/20

Lake Stevens

Date

City

Date

City

Judicial/Reviewing Officer

Date

*April 28, 2020*

This Worksheet has been certified by the State of Washington Administrative Office of the Courts.  
Photocopying of the worksheet is permitted.

**APPENDIX C – 4/28/2020 ORDER RE: Petitioner’s Motion To  
Modify Child Support**



FILED

2020 APR 28 PM 3:20

COURT CLERK  
SNOHOMISH COUNTY WASH

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SNOHOMISH

In re the Marriage of:

JAMES ALAN CLARK,  
  
Petitioner,

and

WENDY KRISTINE CLARK,  
  
Respondent.

Case No.: 10-3-01158-9

ORDER RE: PETITIONER'S MOTION TO  
MODIFY CHILD SUPPORT ORDER

1. The Petitioner made a *Motion for Order to Modify the Child Support Order*. A hearing on the *Motion* was held on April 28, 2020.
2. The Court has considered the *Motion* and any supporting documents, response from the other party, other documents from the court record identified by the court, if any, and any testimony or argument.
3. The court finds good cause to approve this Order.
4. **The Court Orders:**
  - a. The court signed a Temporary Child Support Order and Worksheets filed separately on today's date.

ORDER RE: PETITIONER'S MOTION TO MODIFY CHILD  
SUPPORT ORDER - 1

BREWE LAYMAN P.S.  
Attorneys at Law

P.O. Box 488  
Everett, Washington 98206-0488  
(425) 252-5167 Phone  
(425) 252-9055 Fax  
www.brewelaw.com

WSSR

1 b. Transfer of Case to Binding Arbitration. The issues in the above captioned action,  
2 that relate to post-secondary support, residential credit and payment of other expenses shall be  
3 determined in binding arbitration.

4 c. Arbitration Fees. The arbitrator's fees shall be paid 100% by the Petitioner, James  
5 Clark.

6 d. Attorney's Fees. The Petitioner shall pay the Respondent's Attorney's Fees in the  
7 amount of \$2,500.00 based on the Respondent's need and the Petitioner's ability to pay. A  
8 money judgment shall enter in the Temporary Child Support Order, filed separately on today's  
9 date.

10 Ordered.


11 DONE IN OPEN COURT this 28 day of April, 2020.

12   
13 JUDGE/COURT COMMISSIONER

14 This order is presented by Respondent's  
attorney:

Copy Received:

15 BREWE LAYMAN P.S.  
Attorneys at Law

16  
17 By   
18 Karel D. Moore, WSBA 21328  
Attorney for Respondent

James Clark  
Petitioner/Pro Se

20  
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22  
23 ORDER RE: PETITIONER'S MOTION TO MODIFY CHILD  
SUPPORT ORDER - 2

BREWE LAYMAN P.S.  
Attorneys at Law

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Everett, Washington 98206-0488  
(425) 252-5167 Phone  
(425) 252-9055 Fax  
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1 Copy Received:

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3 Wendy Kristine Clark

4 Wendy Clark  
Respondent

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23 ORDER RE: PETITIONER'S MOTION TO MODIFY CHILD  
SUPPORT ORDER - 3

**BREWE LAYMAN P.S.**  
Attorneys at Law

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24

**APPENDIX D – 04.28.20 Child Support Order Motion  
Hearing**



10-3-01158-9  
MTHRG 315  
Motion Hearing  
8110886



SUPERIOR COURT OF  
WASHINGTON  
FOR SNOHOMISH COUNTY

FILED

2020 MAR 29 PM 3:20

SECRETARY

JAMES CLARK  
(PETITIONER)  
AND  
WENDY CLARK  
(RESPONDENT)

CAUSE NO.: 10-3-01158-9  
JUDGE: ANNA G. ALEXANDER  
CLERK: JESIKA FULLER  
DATE: 4-28-2020 @ 9:00 A.M.  
DIGITALLY RECORDED

THIS MATTER CAME ON FOR: MODIFY CHILD SUPPORT

CONTINUED DATE/TIME/SESSION NAME/CONTINUANCE CODE:

HEARING DATE SET/TIME/SESSION NAME:

ACTION:

HEARING STRICKEN/CODE:

PETITIONER APPEARED: YES, VIA TELEPHONE

COUNSEL: PRO SE

RESPONDENT APPEARED: NO

COUNSEL: KAREN MOORE, VIA  
TELEPHONE

GUARDIAN AD LITEM APPEARED: NO

DOCUMENTS FILED:

ORDERS ENTERED: ORDER RE: PETITIONER'S MOTION TO MODIFY CHILD SUPPORT; TEMPORARY CHILD SUPPORT ORDER; AND WASHINGTON STATE CHILD SUPPORT SCHEDULE WORKSHEETS

PROCEEDINGS/COURT'S FINDINGS:

THE COURT DOES NOT FIND CREDIBLE THE INFORMATION IN THE SUBMISSIONS THAT THE EXPENSES ARE SIGNIFICANTLY INCREASED SUCH THAT A RESIDENTIAL CREDIT IS APPROPRIATE AT THIS TIME. THE COURT WILL NOT ORDER A RESIDENTIAL CREDIT. THE COURT FINDS IT APPROPRIATE TO MODIFY THE CHILD SUPPORT ORDER BECAUSE THE SCHEDULE HAS CHANGED AND IT HAS BEEN TWO YEARS. THE COURT ALSO FINDS IT APPROPRIATE TO TRANSFER THE CASE TO BINDING ARBITRATION ON THE OTHER ISSUES. ARBITRATION IS TO BE PAID BY THE PETITIONER. THE COURT FINDS IT IS A REASONABLE AND APPROPRIATE REQUEST FOR THE PETITIONER TO PAY ATTORNEY FEES IN THE AMOUNT OF \$2,500.00 BASED ON PETITIONER'S ABILITY TO PAY. THE COURT BELIEVES THAT THE GROSS MONTHLY INCOMES AS INDICATED IN CHILD SUPPORT WORKSHEET ARE THE RIGHT NUMBERS AT THIS TIME. THE PETITIONER'S INCOME IS \$14,558.27 IMPUTED AT 40 HOURS PER WEEK. THE RESPONDENT'S INCOME IS \$5,861.40. THEREFORE THE STANDARD CALCULATION WILL BE \$1,547.32. THE TEMPORARY CHILD SUPPORT ORDER PENDING ARBITRATION WILL HAVE THE ATTORNEY FEES JUDGMENT OF \$2,500.00 FROM THE PETITIONER TO THE RESPONDENT. THE COURT IS NOT ORDERING ANY DEVIATION AT THIS TIME. CHILD SUPPORT WILL BE STARTING

**JAMES CLARK AND WENDY CLARK**

**10-3-01158-9**

MAY 2020 AND WILL BE IN TWO PAYMENTS WITH THE FIRST HALF TO BE PAID BY THE 5<sup>TH</sup> OF THE MONTH AND THE SECOND HALF TO BE PAID BY THE 20<sup>TH</sup> OF THE MONTH. THE COURT ADOPTS THE END DATE OF SUPPORT THAT IS UNTIL THE CHILD TURNS 18 OR IS NO LONGER ENROLLED IN HIGH SCHOOL, WHICHEVER HAPPENS LAST. ON A TEMPORARY BASIS, THE COURT ORDERS POST-SECONDARY SUPPORT AS PROPOSED SUBJECT TO ARBITRATION. THE COURT ADOPTS THE OTHER PARAGRAPHS PROPOSED AS THE COURT FINDS THEY ARE EQUITABLE AND APPROPRIATE.

**JAMES CLARK - FILING PRO SE**

**June 01, 2020 - 4:34 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 98172-8  
**Appellate Court Case Title:** In re the Marriage of James Alan Clark v. Wendy Kristine Clark  
**Superior Court Case Number:** 10-3-01158-9

**The following documents have been uploaded:**

- 981728\_Petition\_for\_Review\_20200601163049SC841723\_6261.pdf  
This File Contains:  
Petition for Review  
*The Original File Name was 06.01.20 - Petition For Review.pdf*

**A copy of the uploaded files will be sent to:**

- karenm@brewelaw.com

**Comments:**

Updated version with 04.28.20 Child Support Order included as Appendix D. Use this to go with motion for amended Petition.

---

Sender Name: James Clark - Email: diegoslice@gmail.com  
Address:  
3493 111th Drive NE  
Lake Stevens, WA, 98258  
Phone: (425) 609-3660

**Note: The Filing Id is 20200601163049SC841723**