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COURT OF APPEALS DIVISION I
STATE OF WASHINGTON
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No. 69442-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In re the Marriage of:

SHUDAN ZHU ROHDE,

Appellant/Cross-Respondent,

vs.

JOSEPH THOMAS ROHDE,

Respondent/Cross-Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
THE HONORABLE SHARON ARMSTRONG

CROSS-REPLY BRIEF OF RESPONDENT/CROSS-APPELLANT

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I. CONDITIONAL CROSS-REPLY ARGUMENT

RCW 26.19.071 (6) requires the trial court to impute income to a parent who is voluntarily unemployed or underemployed, in order to prevent that parent from avoiding his or her child support obligation. *Marriage of Didier*, 134 Wn. App. 490, 496, ¶ 9, 140 P.3d 607 (2006), *rev. denied*, 160 Wn.2d 1012 (2007). Contrary to the mother's claim, the trial court must impute income if a parent is voluntarily unemployed or underemployed, it has no discretion. (Cross-Resp. Br. 8-9) The plain language of the statute clearly shows that the trial court "shall" impute income to a voluntarily unemployed parent. "As a general rule, this court interprets statutory directives using the word 'shall' as mandatory or imperative in character." *In re K.R.P.*, 160 Wn. App. 215, 223, ¶ 22, 247 P.3d 491, *rev. denied*, 171 Wn.2d 1033, 257 P.3d 664 (2011).

Marriage of Foley, 84 Wn. App. 839, 930 P.2d 929 (1997) (Cross-Resp. Br. 8-9), relied on by the mother, does not support her claim that a trial court has discretion to not impute income if a parent is voluntarily unemployed or underemployed. In *Foley*, the father was a self-employed contractor with reported income of only \$850 per month. For purposes of calculating child support, the trial court imputed income of \$1,600 per month, because he was

voluntarily underemployed. The appellate court affirmed, holding that rather than paid employment, the father spent his days on hobbies and assisting a friend to repair or construct a home without compensation. *Foley*, 84 Wn. App. at 843.

The mother in this case is voluntarily unemployed. She testified at trial in August 2012 that she had not actively pursued any employment in 2012, even though the parties had already been separated for more than a year. (RP 120, 450) The fact that she stated her intention to attend school does not make her *involuntarily* unemployed, which would warrant not imputing income to her.¹ *See Marriage of Jonas*, 57 Wn. App. 339, 788 P.2d 12 (1990).

In *Jonas*, Division Two held that the trial court properly imputed income to a father who was unemployed while attending school. The court stated, “[n]o matter how legitimate their reasons [] each [parent] is accountable for earnings foregone in making the choice to be unemployed.” *Jonas*, 57 Wn. App. at 340; *see also Marriage of Vander Veen*, 62 Wn. App. 861, 815 P.2d 843 (1991)(imputing income to mother, who had not worked outside the

¹ Notably, the mother did not in fact go to school after trial as evidenced by the parties’ CR2A Agreement. (*See* CP 497)

family home for 13 years and who would need formal training in order to get a job).

Because the mother was voluntarily unemployed, the trial court erred in failing to impute income to her.

II. CONCLUSION

The trial court erred in failing to impute income to the mother. In the event that this court remands on any of the issues raised by the appellant, it should direct the trial court on remand to impute income to the mother.

Dated this 15th day of August, 2013.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on August 15, 2013, I arranged for service of the foregoing Cross-Reply Brief of Respondent/Cross-Appellant, to the court and to the parties to this action as follows:

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DATED at Seattle, Washington this 15th day of August, 2013.



Victoria K. Isaksen