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COURT OF APPEALS  
DIVISION ONE

JUL 11 2013

No. 69995-4  
IN THE COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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SOHRAB DANESHAFR, Appellant

v.

ROXANNA VELSEH, Respondent

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FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2013 JUL 11 PM 2:09

BRIEF OF APPELLANT

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I. ASSIGNMENT OF ERROR.

The trial court erred in the calculation of child support transfer payment, overlooking the evidence that both parents maintain separate household, and that the child resides in their separate households every other day and every other weekend, and failing to state specific findings for denying a deviation from standard calculation.

II. STATEMENT OF THE CASE

On January 30, 2004, Sohrab Daneshfar and Roxanna Veiseh were divorced. On the same date, the Honorable Carlos Velategui, King County Commissioner, signed the Order of Child Support which provided a deviation from standard calculation based upon parties' agreement. According to the said Order of Child Support, Sohrab Daneshfar was obligated to pay \$0.00 per month.

For more than 8 years following this Order of Child Support, parties maintained separate households where their child, in the alternate, spent every other day and every other weekend.

On October 18, 2012, Roxanna Veiseh filed her Petition to Modify Child Support because of the following reasons: (1) the previous order was entered more than a year ago and there has been a change in the income of parents, (2) the order works a severe hardship, and (3) the child has moved to a new age category. According to her proposed Washington State Child Support Schedule Worksheet, she was seeking a transfer payment from Appellant in the amount of \$776.19. This amount was based upon Appellant's estimated income of \$6,000.00 per month.

The case proceeded by way of Trial by Affidavit. The trial court made a determination as to the parties' income for the purposes of Child Support Worksheet, as well as the amount of transfer between the parties.

Following the Trial by Affidavit, in which the evidence was presented regarding a split in residential time for a child, King County Superior Court modified the previous child support order without taking into consideration that both parents maintain separate households. The Order of Child Support did not provide for any deviation from standard calculations as contemplated by RCW 26.19.075(1)(d).

### III. STANDARD OF REVIEW

A trial court child support calculation and its grounds for deviation from presumptive child support schedule, if any, are reviewed for abuse of discretion (*See: In re Marriage of Bell*, 101 Wn. App. 366, 4 P.3d 849 (2000)). The trial court abuses its discretion if it exercises its discretion on a ground, or to an extent, that is clearly untenable or manifestly unreasonable (*See: Curran v. Curran*, 26 Wn. App. 108, 611 P.2d 1350 (1980)).

### IV. ARGUMENT

The legislature's stated intent in enacting Chapter 26.19 RCW, the child support schedule statute, was 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 intended the child support obligation to be equitably apportioned between the parents (*See: RCW 26.19.101; In re the Marriage of Leslie*, 90 Wn. App. 796, 954 P.2d 330 (1998), *review denied*, 137 Wn.2d 1003 (1999)).

Generally, the child support schedule contemplates that (1) one parent will pay his or her share of support by providing care to the child as the child's primary residential parent, and (2) the nonresidential parent will pay his or her obligation by paying child support to the primary residential parent. (*See e.g. In re Marriage of Oakes*, 71 Wn. App. 646, 861 P.2d 1065 (1993)).

Typically, after the court determines the basic child support obligation, regardless of whether it applies an amount in the economic table or exceeds the table, it determines the standard calculation, which is the presumptive amount of child support owed by the obligor parent to the obligee parent. The court next determines whether it is appropriate to deviate from the standard calculation (*See*: RCW 26.19.011(4), (8)). The trial court has discretion to deviate from the standard calculation based on such factors as the parents' income and expenses, obligations to children from other relationships, and the children's residential schedule.

In the instant case, Appellant does NOT contend that the trial court abused its discretion in determining the Appellant's income for child support calculations. What Appellant contends is that the trial court failed

to make required written findings, when it declined Appellant's request for deviation.

RCW 26.19.075(1)(d) specifically provides that the trial court can deviate from the standard calculation if a child spends a significant amount of time with the parent who is obligated to make a support transfer payment, to the extent the deviation will not 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.

RCW 26.19.035 (2) specifies that 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. (RCW 26.19.035(2)).

A trial court clearly has discretion to deviate from the standard calculation based on a parent's duty of support to another child (*See: In re Parentage of J.M.K.*, 155 Wn.2d 374, 387-88, 119 P.3d 840 (2005) (paternity affidavit establishes the duty of support regardless of marital status); *In re Marriage of Bell*, 101 Wn. App. 366, 371 n.9, 4 P.3d 849 (2000) (" 'Duty of support' means all support obligations, not merely payments of court-ordered child support." (quoting *Fernando v. Nieswandt*, 87 Wn. App. 103, 111, 940 P.2d 1380 (1997))).

The ample evidence was presented to the trial court regarding the split residential schedule. On numerous occasions Appellant in his court filings indicated, albeit not using the precise term of "Deviation from Standard Calculation", that certain adjustment to transfer payment should be made. For instance, in his Response to Petition for Modification of Child Support, Appellant stated that "...Both parents have shared physical custody of the minor child. He spends 50% of the time with mother and 50% with father. Respondent pays 50% of all child's expenses." (CP Page 5, Paragraph 1.4 and Paragraph 2). Appellant's Declaration (CP Pages 81-89), and especially attached to his Declaration Exhibit A (CP 91), submitted to the trial court describes in detail that he shares almost equally a residential time with Respondent. Furthermore, Declaration of Roxanna

Veiseh specifically refers to the previously entered parenting plan which “... schedules equal time with both parents....” (CP Page 44, Lines 5-6), even though parties disagree as to the amount of time a child spends with each parent.

When the court denies a party's request for a deviation, it must also enter findings that specify the reasons for its decision. (*See*: RCW 26.19.075(3); Brandli v. Talley, 98 Wn. App. 521, 991 P.2d 94 (1999). Although lack of specific finding is not automatically fatal to the validity of the order and, in the absence of a finding on a particular issue, an appellate court may look to the oral opinion to determine the basis for the trial court's decision denying deviation (*See*: Marriage of Griffin, 114 Wn.2d 772, 791 P.2d 519 (1990)). In the instant case, there is no oral opinion to determine the findings of facts on which the trial court based its denial of the Appellant's request for deviation from standard calculation.

Although, following the Washington State Supreme Court's decision in State ex rel. M.M.G. v. Graham, 159 Wn.2d 623, 152 P.3d 1005 (2007), unlike in cases of split custody, there is no formula to calculate the amount of deviation in split residential time, the trial court

should have deviated from the basic child support obligation based on the amount of residential time the child spend with his parents.

V. CONCLUSION

Appellant submits to this Court that when the trial court either failed to take into consideration the split in residential time, or failed to state in writing the reasons for denial of a party's request for deviation from the standard calculation as required by RCW 26.19.035(2), it abused its discretion in setting the amount of child support.

Appellant respectfully requests the Court to reverse the decision of King County Superior Court dated February 11, 2013 and remand it to the trial court for consideration of deviation from the standard calculation of child support or entering specific findings why such deviation should not be ordered or considered.

Appellant further requests this Court to award him attorney fees and costs pursuant to RCW 26.09.140 and R.A.P. 18.1.

Respectfully submitted on this 10<sup>th</sup> day of July, 2013

A handwritten signature in black ink, appearing to read 'Sohrab Daneshfar', written over a horizontal line.

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DECLARATION OF SERVICE

The Undersigned declares that a true and correct copy of Appellant's Brief was served by the U.S. First Class Mail postage prepared to the Petitioner's counsel to the following address on July 10, 2013:

Law Offices of Richard J. Moore, LLC  
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Signed on this 10<sup>th</sup> day of July 2013 at Redmond, WA

  
Phuanaree Nutthamon