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Division I  
State of Washington

No. 73354-1-I

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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In re the Marriage of:  
JENNIFER YONG LUNA,  
Respondent,  
and  
NEAL HAROLD LUNA,  
Appellant.

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APPEAL FROM THE SUPERIOR COURT  
FOR KING COUNTY  
THE HONORABLE RICHARD EADIE

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BRIEF OF RESPONDENT

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SMITH GOODFRIEND, P.S.

By: Valerie A. Villacin  
WSBA No. 34515  
Catherine W. Smith  
WSBA No. 9542

1619 8<sup>th</sup> Avenue North  
Seattle, WA 98109  
(206) 624-0974

Attorneys for Respondent

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## I. INTRODUCTION

The trial court properly found that Cub Scouts was not an “agreed activity expense” to be paid proportionately under the child support order because the mother never agreed to pay for Cub Scouts. The trial court also properly rejected the father’s claim that the mother should have been ordered to engage in “dispute resolution” under the parenting plan because the parenting plan specifically excludes “child support disputes” from dispute resolution and the son was in any event already participating in Cub Scouts without any interference from the mother. “Joint decision-making” was not required for the son to participate in Cub Scouts because participation in Cub Scouts was not a “major decision;” the activity occurs mostly during the father’s residential time and does not impact the son’s health, safety, and welfare. The mother’s acquiescence in the son’s participation in Cub Scouts was consistent with the provision of the parenting plan allowing “each parent [to] make decisions regarding the day-to-day care and control of each child while the child is residing with that parent,” and not an agreement to pay for Cub Scouts.

## II. RESTATEMENT OF ISSUES

1. The child support order requires the parents to pay their proportionate share of “agreed activity expenses.” The mother repeatedly declined to pay the cost of Cub Scouts. Did the trial court abuse its discretion in finding that the mother was not obligated to pay 70% of the cost because the mother had not agreed to pay and Cub Scouts therefore was not an “agreed activity expense”?

2. The parenting plan allows each parent to “make decisions regarding the day-to-day care and control of each child while the child is residing with that parent.” Was the mother’s acquiescence in allowing the son to participate in Cub Scouts during the father’s residential time an agreement to pay the cost of Cub Scouts?

3. Did the trial court abuse its discretion in concluding that the parties were not required to mediate the issue of Cub Scouts since the only dispute was cost, and the parenting plan specifically prohibits dispute resolution for child support disputes?

4. Should this Court issue an advisory opinion interpreting the parenting plan to determine what activities are subject to joint decision-making and dispute resolution when the

effect of that decision would be to modify the parenting plan to require the parents to mediate child support disputes?

### **III. RESTATEMENT OF FACTS**

**A. An agreed parenting plan gave each parent the right to make decisions for the child during their residential time; only major decisions were to be made jointly.**

Respondent Jennifer Yong and appellant Neal Luna were married for nine years before separating on September 1, 2013. (CP 2, 5) Prior to entry of final orders dissolving their marriage, the parties agreed on a final parenting plan for their sons, then ages 3 and 5. (CP 8-19) Under the agreed parenting plan, the sons reside with each parent equally. (CP 12) “Each parent shall make decisions regarding the day-to-day care and control of each child while the child is residing with that parent.” (CP 13) However, “major decisions” regarding education, non-emergency health care, religious upbringing, work-related day care, and extracurricular activities shall be made jointly. (CP 13) The parties also agreed that “disputes between the parties, other than child support disputes, shall be submitted to mediation by an agreed upon mediator.” (CP 14)

**B. The parties' child support order required the parents to share in the cost of "agreed activity expenses."**

After the agreed parenting plan was entered on June 2, 2014, the parties participated in a settlement conference with King County Superior Court Judge Mariane Spearman on June 27, 2014. (See CP 208) With Judge Spearman's assistance, the parties reached a CR2A Agreement resolving the parties' outstanding financial issues, including child support. (See CP 208)

Jennifer, a dentist, earns monthly net income of \$10,050. (CP 21) Neal, an attorney, earns monthly net income of \$4,334.08. (CP 21) The parties agreed that Jennifer would pay monthly child support of \$1,300 to Neal – a slight downward deviation from \$1,629. (CP 22)<sup>1</sup> In addition to her transfer payment, Jennifer was also to pay 70% of the children's "uninsured health care expenses, work-related child care expenses, and agreed activity expenses." (CP 23-24)

The parties agreed to arbitrate "drafting" or "omitted" issues with Judge Spearman. (CP 208) On August 27, 2014, Neal sought to arbitrate issues that he asserted were related to the "drafting" of the

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<sup>1</sup> The parties agreed that this deviation, based on a residential credit for Jennifer, was not the "law of the case," and that in future proceedings Jennifer could seek a greater deviation or Neal could seek to eliminate the deviation all together. (CP 22)

final orders, including whether “agreed activity expenses” included “expenses for related clothing and equipment (e.g. uniforms, specialized sports equipment and clothing, musical instrument).” (See CP 208, 211-12) Neal also sought a provision in the child support order that would have required the parties to arbitrate child support disputes. (CP 208, 212)

Jennifer objected to Neal’s request for an arbitration provision in the child support order because it had never been part of the parties’ CR2A Agreement. Jennifer expressed concern that because Neal is a lawyer, he would “be at a significant advantage in advocating his positions in any arbitration. Jennifer would have [to] hire an attorney to arbitrate disputes, most likely at substantial cost, in order to be on equal footing.” (CP 209)

Jennifer also objected to Neal’s request for additional language regarding the parties’ obligation to pay “agreed activity expenses.” Where both parents wish to have the children participate in an activity, Jennifer agreed that the parents could share in the cost of the “agreed activity expenses,” but she asserted that both parents should not be obligated to pay activity expenses if only one parent wished to have the child participate in the activity. (CP 209) Jennifer explained that “an agreed-upon sharing of expenses is implicit in the

words ‘agreed activity expenses’ because if Jennifer doesn’t want to pay 70% of, for example, a snowboard, helmet, ski jacket, etc. she would not agree that the child take up snowboarding.” (CP 209)

Judge Spearman arbitrated the parties’ dispute on September 3, 2014. Judge Spearman agreed with Neal that it is “reasonable that the expenses for clothing and equipment for agreed upon activities should be paid by the parents proportionate to their incomes.” (CP 149) However, Judge Spearman agreed with Jennifer that in those instances when “the mother does not wish to take on this additional cost, she need not agree to the children’s participation in the activity.” (CP 149) Judge Spearman rejected Neal’s demand for an arbitration provision in the child support order because the parties had not agreed to one. (CP 149)<sup>2</sup>

Final orders dissolving the parties’ marriage, including the child support order based on the parties’ CR2A Agreement and arbitration ruling, were entered on September 17, 2014. (CP 20-32, 33-35)

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<sup>2</sup> See *Marriage of Irwin*, 64 Wn. App. 38, 54, 822 P.2d 797 (court has no authority to order parties to solve financial disputes by arbitration), *rev. denied*, 119 Wn.2d 1009 (1992).

**C. A dispute arose because the mother did not agree to pay the cost of the son's participation in Cub Scouts, which occurred largely during the father's residential time.**

Before either the parenting plan or child support order were entered, an issue arose regarding the older son's involvement in Cub Scouts. In May 2014, the parties had discussed enrolling the older son in Cub Scouts the following fall. (CP 151) However, before Cub Scouts started, Jennifer told Neal that she no longer supported the son's participation in Cub Scouts, and that she would not agree to pay for any expenses related to Cub Scouts. (CP 154-55) Jennifer advised Neal of her decision on the same day Judge Spearman ruled that "if the mother does not wish to take on [an] additional cost, she need not agree to the children's participation in the activity." (See CP 149, 155)

When the parties initially discussed Cub Scouts, Jennifer was unaware that she would be paying Neal monthly child support of \$1,300 per month, plus 70% of agreed activity expenses, tuition, work-related daycare, and uninsured medical expenses. (CP 188, 190) Jennifer had already agreed to proportionally share the cost of ice hockey, baseball, soccer, and swimming lessons. (CP 190) Further, Jennifer had recently purchased a dental practice, dramatically increasing her monthly expenses. (CP 188) By the time

the son was to enroll in Cub Scouts, Jennifer was no longer willing to pay the additional expense related to another activity. (CP 154-55, 171, 188-90)

Jennifer explained to Neal that since Cub Scouts largely occurred during Neal's residential time, she did not believe that her agreement was necessary for the son to participate in Cub Scouts, since "each parent shall make decisions regarding the day-to-day care and control of each child while the child is residing with that parent." (CP 13, 171) Jennifer told Neal that while she would not agree to pay for Cub Scouts, she would not interfere with the son's participation in Cub Scouts if Neal wished to enroll the son and take him to meetings during his residential time. (CP 154-55, 171)

**D. The father sought to demand the mother's payment by invoking the dispute resolution process under the joint decision-making provision of the parenting plan.**

Even though Jennifer had conceded that her agreement was not necessary for Neal to enroll the son in Cub Scouts, and Neal had in fact enrolled the son in Cub Scouts without her agreement, Neal sought to compel Jennifer to participate in mediation, based on his claim that disputes related to "extracurricular activities" had to be mediated. (CP 158-59) Jennifer refused to mediate, because Neal was truly seeking resolution on payment for Cub Scouts, an issue that

was not subject to dispute resolution. (CP 189) (*See* CP 14: “Disputes between the parties, *other than child support disputes*, shall be submitted to mediation by an agreed upon mediator.”) (emphasis added) Jennifer expressed concern that Neal’s motion was merely a backdoor effort to force Jennifer into dispute resolution over child support disputes, requiring her to obtain assistance from her attorney and incur unnecessary attorney fees. (*See* CP 158-59, 182, 209)

After Jennifer refused to participate in mediation, Neal filed a motion asking the court to order Jennifer to pay her proportionate share of the cost (approximately \$70 as a “startup cost” and between \$111 and \$116 annually), and to clarify whether Cub Scouts was a major decision subject to dispute resolution. (*See* CP 108) Although the motion was prompted by the Cub Scouts issue, Neal asked the court to also “clarify” what activities are subject to the dispute resolution process under the parenting plan, and whether those activities that are subject to the dispute resolution process must be paid for under the child support order as “agreed activity expenses.” (CP 108)

**E. The trial court found that because the mother never agreed to pay for Cub Scouts, it was not an “agreed activity expense” that required her contribution under the child support order.**

The parties first appeared before King County Superior Court Commissioner Bonnie Canada Thurston, who ruled that “extracurricular activities” included Cub Scouts, and was subject to joint decision-making and dispute resolution if the parties could not agree. (CP 258) The commissioner ruled that Jennifer had never recanted her spring 2014 “agreement” for the son’s participation in Cub Scouts, and ordered Jennifer to pay her proportionate share of the cost, plus Neal’s attorney fees of \$1,000 under RCW 26.18.160 because the dispute related to the collection of child support. (CP 259; 1/30 RP 34)

King County Superior Court Richard Eadie (“the trial court”) granted Jennifer’s motion for revision. (CP 260) The trial court concluded that Cub Scouts was not subject to joint decision-making and dispute resolution under the parenting plan because the child’s involvement in this activity was not a “major decision.” (3/20 RP 23-24) The trial court reasoned a “major decision” related to the children’s participation in an extracurricular activity would be one that “affects the children’s health, safety or welfare or significantly affects the other parent’s residential time.” (3/20 RP 23) The trial

court reasoned that Cub Scouts largely occurred during the father's residential time, did not significantly affect the mother's residential time, and did not impact the son's health, safety, or welfare. (3/20 RP 23-24)

The trial court also ruled that Jennifer never agreed on the issue of Cub Scouts because she never agreed to pay the cost of Cub Scouts. (3/20 RP 23) Therefore, the trial court concluded that she was not required to pay her proportionate share of the cost of Cub Scouts. (See 3/20 RP 24) The trial court thus vacated the commissioner's ruling, including its award of attorney fees to Neal. (CP 260)

Neal now appeals. (CP 254)

#### IV. ARGUMENT

- A. This appeal does not require “interpretation” of the child support order and parenting plan. Instead, the issue is whether substantial evidence supports the trial court’s determination that Cub Scouts was not an “agreed activity expense.”**

The issue before this Court is not whether the trial court erred in “interpreting” the parenting plan and child support order. (App. Br. 13) The issue is whether the trial court abused its discretion in denying the father's motion for an order requiring the mother to pay her proportionate share of Cub Scouts as an “agreed activity

expense.” “Interpretation” of the child support order is not necessary to answer that question, because the parties either agreed or did not agree to pay the activity expense, and in this case substantial evidence supports the trial court’s determination that they did not.

There is also no need for this Court to interpret the parenting plan to determine whether the parties are required to jointly decide whether the son can participate in Cub Scouts. Although the trial court purported to interpret the parenting plan to define a “major decision” related to extracurricular activities, it was unnecessary. Whether participation in Cub Scouts is a “major decision,” requiring a joint decision, or a “day-to-day” decision that can be made by the residential parent, the issue was moot because the son has been allowed to participate in Cub Scouts. *Parentage of F.*, 178 Wn. App. 1, 7, ¶ 11, 313 P.3d 451 (2013) (an issue is moot if the court cannot provide the basic relief originally sought or can no longer provide effective relief). In any event, the trial court properly concluded that the parties were not required to jointly decide whether the son can participate in Cub Scouts since it did not substantially interfere with the mother’s residential time, and did not impact the son’s health, welfare, and safety.

**B. Substantial evidence supports the trial court's decision that the mother never agreed to pay for Cub Scouts. Thus the cost was not an "agreed activity expense" under the child support order.**

A trial court's determination of the reasonableness and necessity of expenses for which the parents are responsible is entirely within the trial court's discretion. RCW 26.19.080(4) ("the court may exercise its discretion to determine the necessity for and reasonableness of all amounts ordered in excess of the basic child support obligation"). This Court will uphold a trial court's decision regarding child support unless there was a manifest abuse of discretion. *Marriage of Mattson*, 95 Wn. App. 592, 599, 976 P.2d 157 (1999). To succeed on appeal, the appellant must show that the trial court's decision was manifestly unreasonable, or based on untenable grounds or reasons. *Marriage of Fiorito*, 112 Wn. App. 657, 663-64, 50 P.3d 298 (2002).

Here, the trial court did not abuse its discretion in denying the father's motion for an order requiring the mother to pay 70% of the cost of Cub Scouts. The trial court properly found that the mother never agreed to pay for Cub Scouts (3/20 RP 23), and substantial evidence supports the trial court's determination. *Marriage of Burrill*, 113 Wn. App. 863, 868, 56 P.3d 993 (2002) (substantial evidence is evidence "in a sufficient quantum to persuade a fair-

minded person of the truth of the declared premise.”), *rev. denied*, 149 Wn.2d 1007 (2003).

Even in the parties’ first email regarding the son’s participation in Cub Scouts, cost was never discussed. (*See* CP 151) Thereafter, the mother clearly and consistently refused to pay for Cub Scouts. Her disagreement was expressed before the son attended the first Cub Scouts meeting, and consistently thereafter:

- I will not agree to this extra-curricular activity expense. (CP 155)
- I will not pay for this extracurricular activity. (CP 154)
- Jennifer will not contribute to the expenses Neal incurs for [the son]’s Cub Scout activities. (CP 161)
- Jennifer does not wish to pay for Cub Scouts. (CP 167)
- Jennifer does not want to be obligated to contribute to this expense [Cub Scouts] pursuant to Paragraph 3.15 of the Order of Child Support. (CP 171)

Because the mother consistently stated her disagreement over the payment of Cub Scouts, the trial court properly found that it was not an “agreed activity expense” requiring her contribution under the child support order.

**C. The mother's acquiescence to the son's participation in Cub Scouts during the father's residential time was not an agreement to pay.**

The father claims that the mother's acquiescence to the son's participation in Cub Scouts was also an "agreement" to pay the cost. (See App. Br. 15-16) But as the mother stated, Cub Scouts was largely an activity for the son and father (who had also been a Boy Scout), and all of the weekly meetings occurred during the father's residential time. (CP 189) By acquiescing in the son's participation, the mother was not agreeing to pay the cost; she was simply not interfering with the father's right under the parenting plan to "make decisions regarding the day-to-day care and control of each child while the child is residing with that parent." (CP 13) The fact that the father had the son participate in Cub Scouts during his residential time and incurred the costs after the mother refused to pay is evidence that the father believed that he could unilaterally make this decision.

On appeal, the father claims that "no option exists to agree to the activity, but refuse to pay for it." (App. Br. 15) But not interfering with the child's participation in an activity is not the same as agreeing to pay for it. The cost of Cub Scouts does not become an "agreed activity expense" simply because the mother does not object to the

son's participation during his residential time with his father. If that were the case, the mother could demand the father to pay his proportionate share of the cost any time the mother takes the sons to the movies, bowling, ice skating, or indoor rock climbing during her residential time, unless the father expressly prohibited their participation. (See CP 176-77) A parent should not be allowed to "nickel and dime" the other parent by demanding payment for activities that the parent chooses for the children during their residential time. The trial court properly found that the mother's acquiescence in allowing the son to participate in Cub Scouts during the father's residential time did not obligate her to pay the cost.

**D. Although it was unnecessary because there was no current dispute, the trial court properly concluded that participation in Cub Scout was not a "major decision" requiring joint decision-making since it occurred largely during the father's residential time.**

The trial court did not abuse its discretion in concluding that the issue of Cub Scouts was not subject to dispute resolution under the "major decisions" provision of the parenting plan. The father had in fact enrolled the son in Cub Scouts, and at the time of the hearing the son had been actively participating in Cub Scouts and the mother had stated her intent to not interfere with his participation. (See CP 176-77) Thus, there was no current dispute to resolve, and neither

the trial court nor this Court need reach the question of whether Cub Scouts is a major activity. *Marriage of Knight*, 75 Wn. App. 721, 730, 880 P.2d 71 (1994) (court can decline to consider a moot issue), *rev. denied*, 126 Wn.2d 1011 (1995).

In any event, the trial court properly concluded that participation in Cub Scouts, like any other activity that does not impact the children's health, safety, and welfare and does not significantly impact the other parent's residential time, is not a "major decision." The father claims that the trial court's decision was flawed because it was premised on its misunderstanding of a "material fact," pointing to the trial court's oral comments that Cub Scouts "occurs strictly on the father's time." (App. Br. 17, *citing* 3/20 RP 22, 24) But the trial court acknowledged that Cub Scouts may "cross over into both parents' times" (3/20 RP 26), but found that it nevertheless would not "significantly" impact the mother's residential time. (3/20 RP 24) When there is "cross over," the parties were "going to have to work something out or [the son will] not go." (3/20 RP 26)

The trial court correctly reasoned that not every activity should be subject to joint decision-making and dispute resolution (3/20 RP 25). As even the father acknowledged below, there are

instances when a given activity does not require the other parent's agreement or financial contribution. (CP 113) The father gave examples of a pottery class that falls on one parent's nights, or a parent's decision to take the children skiing during their weekend. He conceded that in those cases, the other parent's agreement or financial contribution was not necessary. (CP 113)

That is the situation here. Cub Scouts largely falls on the father's residential time, and is an activity that is intended as a father/son activity. Although the mother stated that she would try to accommodate any Cub Scout activities that fall during her residential time, this was intended as courtesy and accommodation. That courtesy is consistent with the parenting plan, which normally prohibits one parent from making arrangements for the child that infringes on the other parent's residential time, except with the agreement of the other party. (CP 15) In the case of Cub Scouts, the mother agreed in advance to accommodate activities that infringed on her residential time.

Because there is no dispute that the son is participating in Cub Scouts, this Court need not reach the issue of whether it is a "major decision" under the parenting plan subject to dispute resolution. In any event, substantial evidence supports the trial court's

determination that the activity would not significantly impact the mother's residential time, and was not a major decision subject to dispute resolution.

**E. This Court should decline the appellant's invitation to provide an advisory opinion for future speculative disputes that would in effect modify the dispute resolution provision of the parenting plan.**

Apparently recognizing the futility in challenging a fact-based decision that essentially amounts to a disputed \$77 - \$80 annually,<sup>3</sup> the father argues that the "issue here is much broader." (App. Br. 16) This Court should deny the father's request for what is essentially an improper advisory opinion from this Court deciding in general what activities fall within "major decisions." *See Marriage of Davisson*, 131 Wn. App. 220, 226-27, ¶ 16, 126 P.3d 76 (declining to give a "disfavored advisory opinion" on whether preschool selection in general requires joint decision-making when the Court already determined that regardless of whether the program was daycare or educational in nature, it was a religious program that required joint decision-making), *rev. denied*, 158 Wn.2d 1004 (2006).

What the father really seeks is a determination that any future speculative disputes over extracurricular activities be subject to

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<sup>3</sup> The mother's 70% proportionate share of the \$111-\$116 annual cost of Cub Scouts is between \$77 and \$80.

dispute resolution, and that any resulting resolution directly impact the parents' obligation to pay "agreed activity expenses" under the child support order. (See App. Br. 16-17) In asking this Court to make this "clarification," he is not only seeking an advisory opinion, but one that would improperly modify the parenting plan, in effect making child support disputes (payment of "agreed activity expenses") subject to dispute resolution. *Marriage of Coy*, 160 Wn. App. 797, 804, ¶ 13, 248 P.3d 1101 (2011) ("After a trial court enters a final parenting plan, and neither party appeals it, the plan can be modified only under RCW 26.09.260.").

The underlying premise of this appeal is the father's claim that the mother should have been forced into mediation to resolve the issue of payment of Cub Scouts. The mother had already conceded that the son could participate in Cub Scouts. (CP 123) Thus it was unnecessary for the parties to participate in mediation under the "major decision" provision of the parenting plan. Instead, the only issue that the father sought to resolve in mediation was payment for Cub Scouts. But the parenting plan specifically exempts child support disputes from mediated dispute resolution. (CP 14: "Disputes between the parties, other than child support disputes, shall be submitted to mediation.") Therefore, if this Court were to

accept the father's interpretation of the orders, it would be improperly modifying the parenting plan's dispute resolution provision.

Regardless, as a matter of policy (and under the terms of the parenting plan), a parent should be allowed to participate in activities with their children during their residential time without having to extract agreement from the other parent, or mediate (or litigate) the issue. Likewise, a parent should not be required to pay the cost of that activity solely because she does not prohibit the child's participation in an activity that occurs during the other parent's residential time.

The rule that the father advocates will only hurt the children. If one parent cannot or will not pay the cost of an activity, her only choice is to prohibit the child's participation. Since mediation is no guarantee that the parties will reach an agreement, the child would be deprived of participating in that activity even if the other parent might have been willing to pay the cost. The proper rule is if a parent does not wish to pay the cost of an activity, the other parent can nevertheless enroll the child and pay the cost of the activity so long as it does not impact the child's health, safety, and welfare, and does not impact the other parent's residential time.

In any event, presuming that an agreement through mediation on the child's participation in an extracurricular activity automatically requires payment under the child support order conflates the child support order and parenting plan. The parenting plan requires the parents to jointly decide on the children's participation in extracurricular activities. The child support order requires the parents pay their proportionate share of "agreed activity expenses." (See CP 23-24) If it was intended that the parties were required to pay the cost of all of the children's extracurricular activity expenses, the order of child support would say so. But the child support order does not require the parties to proportionately pay for "extracurricular activities," only "agreed activity expenses" – in other words, activity expenses that the parties jointly agree to pay. (See CP 13, 23-24)<sup>4</sup>

Agreement on the child's participation in an activity is different than agreement on the payment of related expenses. Just because a parent does not prohibit the child from participating in an activity does not mean that the parent should pay for it. Nor should a parent, as here, be dragged into parenting mediation to force an

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<sup>4</sup> By contrast, joint decision-making is required for "work-related day care" under the parenting plan, and the child support order requires the parties to pay their proportionate share of "work-related day care." (CP 13, 23-24)

agreement to pay for an activity. Because there is no current dispute whether a certain activity falls within the “major decisions” provision of the parenting plan, this Court should decline to provide an advisory opinion that would, under the father’s interpretation, effectively modify the dispute resolution process under the parenting plan to include child support disputes.

**F. This Court should deny the father’s request for attorney fees and award attorney fees to the mother for having to address this meritless appeal.**

This Court should deny the father’s demand for attorney fees below and on appeal. The mother did not “frustrate” the dispute resolution process by refusing to mediate the issue of Cub Scouts because there was no dispute. If the father wished to enroll the son in Cub Scouts (as he did), the mother expressly stated she would not interfere with the son’s participation. Further, the real dispute was whether the mother should be required to pay the cost of Cub Scouts, a “child support dispute” and not subject to dispute resolution under the parenting plan. (CP 14)

An award of attorney fees to the father is also not warranted under RCW 26.18.160, because the mother was not obligated to pay Cub Scouts under the child support order because it was not an “agreed activity expense.” The mother consistently stated her

disagreement to pay for Cub Scouts. Nevertheless, the father chose to enroll the son in Cub Scouts anyway and any expenses related to that activity should be borne by the father alone.

If any fees should be awarded, they should be awarded to the mother for both the father's intransigence in pursuing this meritless appeal and for her having to answer it. RAP 18.9(a) (authorizing terms and compensatory damages for a frivolous appeal); *Marriage of Healy*, 35 Wn. App. 402, 406, 667 P.2d 114, *rev. denied*, 100 Wn.2d 1023 (1983) (appeal may be so devoid of merit to warrant the imposition of sanctions and an award of attorney fees); *Chapman v. Perera*, 41 Wn. App. 444, 456, 704 P.2d 1224 (1985) (another basis for an award of fees is the other party's intransigence in making the litigation more difficult). Below, the father sought to force the mother to mediate an \$80 dispute even though the parenting plan strictly exempts child support disputes from mediation. His decision to appeal the trial Court's decision denying his requested relief, to obtain an advisory opinion from this Court that would in effect modify the dispute resolution process of the parenting plan, warrants an award of attorney fees to the mother.

This Court should award attorney fees to the mother.

## V. CONCLUSION

This Court should affirm the trial court's decision in its entirety and award attorney fees to the mother.<sup>5</sup>

Dated this 14<sup>th</sup> day of December, 2015.

SMITH GOODFRIEND, P.S.

By: 

Valerie A. Villacin  
WSBA No. 34515  
Catherine W. Smith  
WSBA No. 9542

Attorneys for Respondent

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<sup>5</sup> Even if reversal was warranted, the proper relief is remand to Judge Eadie, not reinstatement of the commissioner's ruling. (App. Br. 23) See *Marriage of Fairchild*, 148 Wn. App. 828, 831, ¶ 7, 207 P.3d 449 (2009) (this Court reviews the superior court's ruling, not the commissioners); see e.g. *Perez v. Garcia*, 148 Wn. App. 131, 145, ¶ 35, 198 P.3d 539 (2009); *Marriage of Balcom & Fritchle*, 101 Wn. App. 56, 59-60, 1 P.3d 1174 (2000); *Goodell v. Goodell*, 130 Wn. App. 381, 394, ¶ 33, 122 P.3d 929 (2005).

**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 December 14th, 2015, I arranged for service of the foregoing Brief of Respondent, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-File
Kenneth W. Masters Masters Law Group PLLC 241 Madison Ave N Bainbridge Island WA 98110-1811 <a href="mailto:ken@appeal-law.com">ken@appeal-law.com</a>	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
David S. Law Skellenger Bender PS 1301 5th Ave Ste 3401 Seattle WA 98101-2630 <a href="mailto:dslaw@skellengerbender.com">dslaw@skellengerbender.com</a>	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

**DATED** at Seattle, Washington this 14<sup>th</sup> day of December,  
2015.

  
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Jenna L. Sanders