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July 14, 2016
Court of Appeals
Division I
State of Washington

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In re the Marriage of:

AMBER HANSEN,

Respondent/Cross-Appellant,

and

TROY EDWARD HANSEN,

Appellant/Cross-Respondent.

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
THE HONORABLE MONICA J. BENTON

REPLY BRIEF OF RESPONDENT/CROSS-APPELLANT

SMITH GOODFRIEND, P.S.

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TABLE OF CONTENTS

I. INTRODUCTION1

II. CROSS-REPLY ARGUMENT 2

 A. The trial court’s findings do not support its decision requiring each parent to pay half the cost of postsecondary support..... 2

 B. If this Court reverses the award of child support above the standard calculation, this Court should also direct the trial court to reconsider its decision ordering each parent to pay half the “expenses not included in the transfer payment.” 6

 C. This Court should award attorney fees to the mother based on her need and the father’s ability to pay.7

III. CONCLUSION 8

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>In re Yeamans</i> , 117 Wn. App. 593, 72 P.3d 775 (2003)	3, 6
<i>Marriage of Casey</i> , 88 Wn. App. 662, 967 P.2d 982 (1997)	3
<i>Marriage of Daubert & Johnson</i> , 124 Wn. App. 483, 99 P.3d 401 (2004)	3
<i>Marriage of McCausland</i> , 159 Wn.2d 607, 152 P.3d 1013 (2007)	3
Statutes	
RCW 26.09.001.....	3
RCW 26.09.140.....	7
RCW 26.19.001	1, 3, 5
RCW 26.19.080.....	6
Rules and Regulations	
RAP 18.1	7

I. INTRODUCTION

By the time the parents' postsecondary support obligation is triggered, the mother's award of spousal maintenance will have terminated and the mother's income will be a fraction of the father's income. The trial court erred in ordering the parents to equally share the obligation for future postsecondary support for the parties' two daughters, ages 13 and 9, rather than in proportion to their incomes as required by statute. RCW 26.19.001. None of the trial court's findings supporting an award of child support to the mother above the standard calculation justify a deviation requiring the mother to pay more than her proportionate share of the daughters' postsecondary support in the future, when her income will be severely reduced. The trial court therefore was required to order the parents to share the cost of postsecondary support in proportion to their incomes.

Of the trial court's decisions, only this decision on postsecondary support warrants reversal. The rest of the trial court's decisions, which the father challenges, are entirely discretionary and should be affirmed. But if this Court reverses on the trial court's decision to award child support above the standard calculation, this court also should remand for the trial court to reconsider its order

requiring each party to pay half the daughters' current expenses not covered by the father's transfer payment. Finally, this Court should award attorney fees to the mother.

II. CROSS-REPLY ARGUMENT

A. **The trial court's findings do not support its decision requiring each parent to pay half the cost of postsecondary support.**

The trial court erred in ordering each parent to pay half the cost of the daughters' future postsecondary support when the mother's income is less than half the father's income. (*See* CP 449, 451) This is especially true because by the time the parties' daughters, ages 13 and 9, start college, the mother's maintenance, which is nearly 80% of her current income, will have terminated. (*See* CP 55, 458) By the time the parties' obligation to provide postsecondary support is triggered, the mother's income, including imputed income, will be less than 1% of the father's income. (*See* CP 449)¹ Even if the mother, who currently has only a GED, completes her training to become a registered nurse, her income will still only be at best a third of what she now receives in spousal maintenance. (*See* Ex. 105)

¹ Once maintenance terminates, the father's monthly gross income will increase to \$93,398, and the mother's monthly gross income will decrease to \$5,028. (*See* CP 449)

It is the intent of the Legislature that child support obligations be equitably apportioned between the parents. RCW 26.19.001. As a consequence, this Court has held that postsecondary support should be equitably apportioned between the parents, according to their income. *Marriage of Daubert & Johnson*, 124 Wn. App. 483, 502, ¶ 44, 99 P.3d 401 (2004) (citing RCW 26.19.001), *rev'd on other grounds* (extrapolation) by *Marriage of McCausland*, 159 Wn.2d 607, 152 P.3d 1013 (2007). A trial court can deviate from this equitable apportionment of child support only if it makes findings supporting its deviation. *See In re Yeamans*, 117 Wn. App. 593, 600-01, 72 P.3d 775 (2003) (trial court must allocate extraordinary child support expenses in proportion with parents' incomes unless it makes findings supporting a deviation from the basic support obligation) (Cross-Resp. Br. 16); *Marriage of Casey*, 88 Wn. App. 662, 665, 967 P.2d 982 (1997) (affirming a deviation making the father 100% responsible for long distance transportation expenses based on findings that the mother had a learning disability and imposing an obligation on her would reduce her income below poverty level, causing substantial hardship).

Here, the trial court erred in ordering the mother to be responsible for half the cost of the daughters' future postsecondary

support when her current proportionate share of the parties' combined monthly net income is 34%, and is likely to be even less when the daughters start college. While the trial court made findings to support a deviation requiring the father, whose monthly net income is nearly \$35,000, to make a monthly transfer payment of \$4,000 – an amount above the standard calculation of \$1,709 (CP 450, 458-59), those findings do not support a deviation requiring the mother to pay more than her proportionate share of future postsecondary support.

In defending the trial court's decision, the father does not even attempt to explain how the trial court's findings, which largely address the children's current and historical expenses based on the family's standard of living during the marriage, would support a deviation requiring the mother to pay more than her proportionate share of postsecondary support more than 5 years from now when the older daughter would be starting college. Instead, the only "facts" on which the father relies to support the trial court's unwarranted deviation is that the parties had previously contributed over \$100,000 to accounts in the children's names. (Cross-Resp. Br. 16, *citing* RP 468-69)

These accounts were not solely intended to “help pay for college and other post-secondary expenses,” as the father claims. (Cross-Resp. Br. 16) Instead, the evidence was that those funds were intended by the parents to “help [the daughters] buy their first car, to [] pay for their wedding, college, [and] buying a house.” (RP 468) Further, the trial court did not require the parents to use these funds towards the daughters’ postsecondary support. (See CP 451-52) Instead, the trial court ordered that the account “be held for the benefit of the parties’ children,” and designated the mother as the custodian of the accounts. (CP 469)

Even if these accounts, which were funded with community income, could be used towards the daughters’ postsecondary support, any support still owed after application of these funds should be shared by the parents in proportion to their income under RCW 26.19.001. Because the mother’s proportionate share of the parties’ combined monthly net income was 34%, the trial court erred in ordering her to pay half the daughters’ postsecondary support.

B. If this Court reverses the award of child support above the standard calculation, this Court should also direct the trial court to reconsider its decision ordering each parent to pay half the “expenses not included in the transfer payment.”

The trial court’s decision to make the mother pay half the “children’s expenses not included in the transfer payment” (CP 452) when her proportionate share of the income is 34% would normally be a reason to reverse the trial court’s decision as inequitably placing a higher burden on the mother for the children’s support than allowed. RCW 26.19.080 (extraordinary expenses “shall be shared by the parents in the same proportion as the basic child support obligation”); *In re Yeamans*, 117 Wn. App. 593, 600-01, 72 P.3d 775 (2003) (*supra* § II.B). But in light of the trial court’s award of child support above the standard calculation, the mother accepts that its decision apportioning the children’s extraordinary expenses was reasonable, as the transfer payment provides the mother with additional funds in her household that will allow her to contribute the same amount towards these extraordinary expenses as the father even though her income is significantly less than his. But if this Court were to remand on the issue of the transfer payment as requested by the father in his appeal, this Court should also remand on this issue

and direct the trial court to apportion extraordinary expenses in proportion to the parents' incomes.

C. This Court should award attorney fees to the mother based on her need and the father's ability to pay.

This Court should award the mother attorney fees on appeal based on her need and the father's ability to pay. RCW 26.09.140; RAP 18.1(a). The father's income is nearly double the mother's income. (CP 458) And while it is true the mother was awarded property and maintenance (Cross-Resp. Br. 16-17), she should not be required to use those awards to defend decisions by the trial court that were wholly within its discretion. This is particularly true when the trial court acknowledged in an unchallenged finding that even with the mother's maintenance and property awards, she still had the "financial need to have her attorney fees paid and the husband [had] the ability to pay those fees," and awarded her \$75,000 in attorney fees in the superior court. (Finding of Fact (FF) 2.14 (2), CP 40)

Because the father has the ability to pay attorney fees to the mother, who has the need lest she be forced to use her property and maintenance awards to defend the trial court's decision, this Court should order the father to pay the mother's attorney fees.

III. CONCLUSION

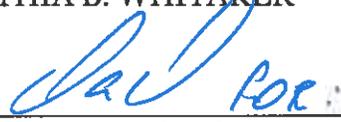
This Court should reverse the trial court's order requiring the parties to equally share the cost of future postsecondary support, and award attorney fees to the mother. This Court should otherwise affirm the trial court's fact-based discretionary decisions challenged by the father on appeal. Only if this Court remands on the issue of the child support transfer payment, should this Court also remand for the trial court to reconsider its apportionment of the children's expenses that are not included in the transfer payment.

Dated this 14th day of July, 2016.

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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 July 14, 2016, I arranged for service of the foregoing 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 14th day of July, 2016.


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