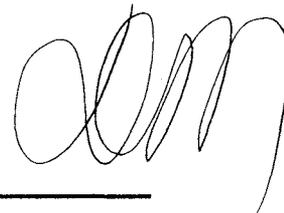


No. 36109-4-II



IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION NO. II

IN THE MATTER OF

GINA FLEMETIS

v.

ANDREW FLEMETIS

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON
FOR PACIFIC COUNTY
No. 02-3-00084-9

THE HONORABLE JUDGE GOELZ

RESPONDENT BRIEF

Gina Fletmetis Wilson
2118 Riddell Street
Raymond, WA 98577

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ASSIGNMENTS OF ERROR
RESPONSES TO APPELLANT

- I. The Superior Court was correct in denying use of Income Tax Return Earned Income Credit as pro-rated monthly income. RCW 26.19.071 calls for tax returns to be used as verification of income. Income sources outlined in the RCW do not include the tax refund amount or Earned Income Credit as part of the monthly income amounts for calculation.

- II. The Pacific County Superior Court has already granted a deviation from the Child Support Schedule by granting the following to the Appellant:
 1. By retaining the Child Support amount granted at Divorce in 2003 (\$350.00).
 2. By allowing a monthly credit to the Father of \$30.00 reducing the Mother to \$320.00 monthly.
 3. The court recognized Legislative Intent according to RCW 26.19.001 by the use of the statewide support Schedule and the January 26, Memorandum of Decision (Exhibit A) cited the difference by comparison to the support amount being paid by Father for the benefit of his other biological child (\$387.00).
Current tax returns and pay stubs were called by the Court,

but a new schedule was not calculated by the Administrative Authorities.

RCW 26.19.075(1)(e)(i)(ii) limits the standards of support calculation to the Mother, Father, and Child before the court and states that children from other relationships shall not be counted to determine the amount of support. Appellant reasoning for deviation request is not appropriate.

In the Memorandum of Decision dated February 22, 2007 (Exhibit B) the Judge sites that the Appellant has falsified his income reporting after verifications were reviewed by the court and therefore denies his Motion and Petition.

- III. Respondent supports court waiver to enter Findings of Fact as both the Appellant and Respondent had made entries of such on their own. The decision to waive Findings of Fact is also addressed in the Memorandum of Decision of February 22, 2007(Exhibit B)
- IV. a) Respondent recognizes that it is not the obligation of the Superior Court to provide copies of signed orders to the subject parties. Copies may be obtained at the Clerk's Office.
- b) There were no non-adjudicated terms in the final order of the court. All issues were addressed during court session and determinations with reasons were provided to parties in the form of Memorandums of Decision.

RESPONSE TO ISSUES

- I. The court called for income verifications but ruled to stay with the child support amount awarded in 2003 (\$350.00).
Respondent does not object to the final order of March 12, 2007
- II. The court was correct in considering only the family for which Modification of Child Support was filed pursuant to RCW 26.19.075. The deviated schedule entered was not in state recognized format and included children from a new relationship for which support has not been ordered.
The increase in allowance for one evening with the Father was granted as a credit of \$30.00 to the Father.
- III. Findings of Fact were supplied by each party to substantiate their incomes and obligations to inform the court. Court rulings and reasons were given during the hearings and as a Memorandum of Decision with copies supplied to both the Appellant and the Respondent. The Judge stated in the hearing of February 22, 2007 that orders may be submitted by both parties for his signature and that Findings of Fact would be waived as he would render his decision with no further arguments in court.
- IV. The Appellant does not identify “language not previously

argued” specifics he claims are in the Final Order. It is not the obligation of the court to send copies of the signed orders to the domestic parties. These documents are for public review and anyone may obtain copies at the Clerk’s Office.

RESPONDENT STATEMENT OF THE CASE

- I. Andrew Fletmetis and Gina Fletmetis, now Wilson, divorced in 2003. Child Support was set for their child in the amount of \$350.00.
- II. A modified Parenting Plan was entered on July 20, 2006 with the only difference being an allowance of Andrew to pick up their Son, Bailey, on Sunday evening rather than BFC leaving Mom’s to go to school on Monday AM and getting off the bus at Dad’s Monday PM. He was confused about where to be on Monday.
- III. Andrew challenged the 2003 Child Support filing a Modification of Child Support in a Superior Court hearing on January 8, 2007. His requests were as follows:
 1. Reduce child support for Bailey for three reasons.
 - a) He had one more evening with Bailey
 - b) He had adopted the two children of his new spouse calling for a Deviated Schedule formula for 4 children.
 - c) Calculate Mother’s tax return EIN as pro-rated monthly income.

2. He requested the new order to allow Andrew and his wife to claim Bailey as a dependent on their tax returns every other year.

At the hearing of January 8, 2007 Honorable Judge Goelz ruled the following:

1. a) He granted a \$30.00 monthly credit to the Father.
 - b) Judge Goelz ruled not to reduce Bailey's child support because his Father "chose" to adopt his new spouse's two other children. Child support remained at 350.00 less \$30.00 = Net amount to Bailey of \$320.00.
 - c) The Judge rejected using a tax return as monthly income.

Note: It is within the right of the custodial parent to claim the dependent child for deduction . To deprive the deduction of Bailey to his Mother would cause unreasonable financial hardship and compromise meeting the child's basic needs. Mother is a single Mom with a modest salary.

IV. At the second hearing of January 25,2007 the Father, Andrew Flemetis had failed to provide income verifications as Petitioner, Gina Flemetis, had requested so the Administration could correctly calculate the proper Child Support amount. The Appellant points out to court records that show an accusation made by Andrew's counsel that Ms.

Wilson (Gina Flemetis) had understated her income by \$200.00. The court records also show that in the Child Support Schedule submitted by Mr. Flemetis his net income was calculated on his side by using his withholdings and he did not use the withholdings on the side of Gina Flemetis. The issue of pro-rating the Mother's tax return Earned Income Credit for the purpose of increasing her monthly income was dismissed by Judge Goelz at this hearing.

Judge Goelz called for income verifications to be supplied to the court by both parties for review and decision.

- V. When nothing was heard, Gina Wilson fna Gina Flemetis filed for a docket date to call for a final order. The hearing was scheduled for February 22, 2007. THE RESPONDENT DOES NOT AGREE WITH THE APPELLANT'S STATEMENT OF ACTIONS DURING THIS HEARING. The Judge basically had not reviewed the income verifications and called for each party to submit proposed Findings and Orders for his signature. The February 22nd Memorandum of Decision (Exhibit B) states that upon review of the income documentation for years of 2004-2006 the court found the Father's most current income to be \$49,742 and found no support to the stated monthly gross figure given of \$3,121.21. For this reason alone the Father's Petition was denied. By referring to the Child Support Schedule submitted to the court (Exhibit C) that the calculation used by the Gina Wilson shows a more modest gross monthly figure than Andrew Flemetis actually earns and using the state recognized formula for the two

child table calculates the current child support should be \$429.02.

You may also note that on line 18a of the schedule that the

Appellant's new spouse has earnings of \$2,333.00 monthly.

THE RESPONDENT CHOOSES NOT TO PURSUE A HIGHER
MODIFIED AMOUNT AND HONORS THE COURT ORDER DATED
MARCH 12, 2007.

RESPONSE TO ARGUMENT

I. CHILD SUPPORT SHOULD BE DETERMINED BASED ON THE ACTUAL INCOMES OF THE PARTIES.

Respondent, Gina Wilson, agrees with all the RCW references cited in the Appellant brief, but would like to make the Appeals Court aware that these sections have been interpreted incorrectly. RCW 26.19.075(1)(b) does not include tax returns as a recurring income. If it should be included then why does Andrew not use it in his income calculation as well?

RCW 26.19.065 defines the upper and lower limits of child support amounts. The code does not have a (5) or (5)(a). There is no support to show that the RCW lists any expenses at all much less Federal and State Income Taxes. Gina Wilson submits that the RCW is quoted in error and offers further reference to page 2 of (Exhibit D)-The Washington State Child Support Schedule Definitions and Standards that supports her use of FICA as a recognized deduction when determining net income.

Each party before the court prepared their own proposed version of the Child Support schedule and it is fallacious for counsel to accuse the court of calculating the support schedule at all. The court kept the ordered support amount from 2003 and gave Andrew a \$30.00 credit as well. The Appellant

Brief does not even include the Father's version of the support schedule submitted to the court. The version submitted by the Father's attorney contained all the same kind of withholdings deducted to calculate his net income as did Gina's version. His version did not include any withholdings or deductions from the Mother's gross income. Gina Wilson fna Gina Flemetis did not understate her income. He just chose not to use it so as to increase her proportion of the obligation amount.

II. COURT CONSIDERATION OF RELEVANT DEVIATIONS.

Respondent, Gina Wilson, supports the court decision to disallow consideration of the adopted children for the purpose of support calculation. Once again the Apellant is offering a misinterpretation of the RCW 26.19.075. By definition, "duty of support" would only include the child for which a modification has been filed and the child by another relationship for which Andrew pays court ordered support. These two children were included in the child support schedule submitted by Gina Flemetis by using the two- child column for a factor amount shown in #5 field of the child support schedule. The Father CHOSE to adopt the two additional children in his new marriage and does not have a court ordered obligation for support. If the two new children are to be considered then so should the income of the new spouse be included. It only complicates things. It should be noted that the court did not calculate a schedule and ordered the same support amount awarded at divorce in 2003. The deviation process used by the Father's Attorney is just a program on his PC and not a state-recognized schedule. The Appellant's Attorney admits in their Brief

that the Judge did deviate by allowing a one-night credit of \$30.00 a month. He maintains that the Judge did not allow a “full deviation” because of significant loss to the Mother, but he does not mention what amount he would determine the full deviation amount to be.

Respondent, Gina Wilson, recognizes that the judge did not increase Bailey’s child support even though the income levels should have indicated such, but also denied the deviated schedule submitted by the Father to bring an equalization of the households.

III. COURT ENTRY OF FINDINGS OF FACT TO SUPPORT REASONS FOR GRANTING OR DENYING REQUESTED DEVIATIONS.

Respondent, Gina Wilson, maintains that the reasons for deviation are not relevant as stated in Argument II Above. Respondent does not have the education or resources to quote samples of former determinations, but in the sample offered by Apellant for Argument III, he quotes Marriage of Sacco, 114 n.2d 1, 784P .2d 1266 (1990) stating that in the absence of written finding of fact, the appellat court may consider the trial courts’ oral opinion to determine the basis of the court’s decision.

During the course of the Statement of the Case oral reasons were given and records of the court support the decisions and orders handed down by Judge Goelz. Explanations were clearly given for reasons not to deviate.

IV. NOTICE OF PRESENTMENT AND ORDERS CONTAINING ISSUES NOT ADJUDICATED.

Respondent, Gina Wilson, maintains that she did provide copies of the proposed Order and Findings of Fact. If you review the last paragraph in

Appellant's Statement of the Case you will find that Andrew's counsel verifies receipt of the proposed Final Order, Findings of Fact, and Child Support Schedule on February 27, 2007. During the last hearing of February 22, 2007 Judge Goelz gave verbal notice that he would sign orders submitted without further hearings. The final order was not signed until March 12, 2007. With minimal understanding of how the court system works, common sense told respondent, Gina Wilson to keep checking back with the Clerk's Office looking for a final order. It would only be reasonable for an seasoned attorney to do the same.

Copies supplied by Gina Wilson, oral discussions in court, and Memorandums of Decision covered all the issues in the Appellant arguments. There were no non-adjudicated issues. Even the Findings of Fact and proposed order submitted by the attorney firm for Andrew included the tax exemption request.

RESPONDENT CONCLUSION

In the best interest of Bailey Flemetis and to support the Mother's abilities to meet his basic needs, Mother, Gina Wilson fna Gina Flemetis agrees with the Pacific County Superior Court Child Support Order of March 12, 2007. The Final Order of March 12, 2007 should NOT be vacated for the following reasons:

1. To require Gina Wilson to include EIC tax return income in determining monthly income is not within the standards set by RCW 26.19.071 or RCW 26.19.075. RCW 26.19.065 is not applicable as the combined income of both parties fall between the high/low range set forth by statute.

By the virtue of falsifying the amount reported to the court for Father's monthly gross amount his request should be denied. This is supported by the February 22, 2007 Memorandum of Decision (Exhibit B).

Judge Goelz ordered that the support amount remain as in 2003 anyway.

2. The argument presented by Appellant, Andrew Fletmetis finding the Judge in error by disallowing the deviated child support schedule is not relevant for the following reasons:

- a. The Appellant Brief does not include a Child Support Schedule.
- b. The Appellant makes repeat statements that the deviated amount was not considered, but does not indicate what he has calculated the deviated amount to be.
- c. RCW 26.19.001 verifies that Bailey's basic needs of support should not be compromised by further reduction of the child support amount.
- d. RCW 26.19.075 sets standards for limiting the calculation of support to the child and parents before the court for which modification has been filed. The adopted children from the new marriage should not be factored in.

Judge Goelz was within his rights of discretion to try to equalize the the households by not ordering in favor of the Mother's higher calculation for support and by not allowing the deviated schedule to be entered for the Father.

Andrew's counsel calls for the Appeals Court to set a new scheduled amount.

It is the understanding of the Respondent, Gina Wilson, that this is not the duty of the Appellant Court. She would favor Appellant court to calculate.

3. The request of the Appellant, Andrew Fletmetis, to alternate Bailey as a deduction every other year is not in the best interest of Bailey. This

would cause undue hardship for the Mother as she is a single mom and Bailey is her only deduction. Andrew and his new spouse can claim the two adopted children in their household and Bailey as one more deduction would not make a significant difference in their tax return. The combined household income for Andrew is \$75,000+. Their high income does not qualify them for the Earned Income Credit. Gina Wilson has a modest adjusted gross income of \$24,000. The EIC return is her only means to effect repairs and take care of unexpected bills. Bailey feels her sense of financial disparity.

Respectfully submitted by,

 11-9-07
Respondent Signature

Gina Wilson, formerly Fletmetis
2118 Riddell Street
Raymond, WA 98577
360-875-8588

APPENDIX

RCW 26.19.001.....Appendix 1
RCW 26.19.035.....Appendix 2
RCW 26.19.065.....Appendix 4
RCW 26.19.071.....Appendix 5
RCW 26.19.075.....Appendix 8

RCW 26.19.001

Legislative Intent and finding.

The legislature intends, in establishing a child support schedule, 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 intends that the child support obligation should be equitably apportioned between the parents.

The legislature finds that these goals will be best achieved by the adoption and use of a statewide child support schedule. Use of a statewide schedule will benefit children and their parents by:

(1) Increasing the adequacy of child support orders through the use of economic data as the basis for establishing the child support schedule;

(2) Increasing the equity of child support orders by providing for comparable orders in cases with similar circumstances; and

(3) Reducing the adversarial nature of the proceedings by increasing voluntary settlements as a result of the greater predictability achieved by a uniform statewide child support schedule.

RCW 26.19.035

Standards for application of the child support schedule.

(1) Application of the child support schedule. The child support schedule shall be applied:

(a) In each county of the state;

(b) In judicial and administrative proceedings under this title or Title 13 or 74 RCW;

(c) In all proceedings in which child support is determined or modified;

(d) In setting temporary and permanent support;

(e) In automatic modification provisions or decrees entered pursuant to RCW 26.09.100; and

(f) In addition to proceedings in which child support is determined for minors, to adult children who are dependent on their parents and for whom support is ordered pursuant to RCW 26.09.100.

The provisions of this chapter for determining child support and reasons for deviation from the standard calculation shall be applied in the same manner by the court, presiding officers, and reviewing officers.

(2) Written findings of fact supported by the evidence. 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.

(3) Completion of worksheets. Worksheets in the form developed by the administrative office of the courts shall be completed under penalty of perjury and filed in every proceeding in which child support is determined. The court shall not accept incomplete worksheets or worksheets that vary from the worksheets developed by the administrative office of the courts.

(4) Court review of the worksheets and order. The court shall review the worksheets and the order setting support for the adequacy of the reasons set forth for any deviation or denial of any request for deviation and for the adequacy of the amount of support ordered. Each order shall state the amount of child support calculated using the standard calculation and the amount of child support actually ordered. Worksheets shall be attached to the decree or order or if filed separately shall be initialed or signed by the judge and filed with the order.

Standards for establishing lower and upper limits on child support amounts.

(1) Limit at forty-five percent of a parent's net income. Neither parent's total child support obligation may exceed forty-five percent of net income except for good cause shown. Good cause includes but is not limited to possession of substantial wealth, children with day care expenses, special medical need, educational need, psychological need, and larger families.

(2) Income below six hundred dollars. When combined monthly net income is less than six hundred dollars, a support order of not less than twenty-five dollars per child per month shall be entered for each parent unless the obligor parent establishes that it would be unjust or inappropriate to do so in that particular case. The decision whether there is a sufficient basis to deviate below the presumptive minimum payment must take into consideration the best interests of the child and the circumstances of each parent. Such circumstances can include comparative hardship to the affected households, assets or liabilities, and earning capacity. A parent's support obligation shall not reduce his or her net income below the need standard for one person established pursuant to RCW 74.04.770, except for the presumptive minimum payment of twenty-five dollars per child per month or in cases where the court finds reasons for deviation. This section shall not be construed to require monthly substantiation of income.

(3) Income above five thousand and seven thousand dollars. The economic table is presumptive for combined monthly net incomes up to and including five thousand dollars. When combined monthly net income exceeds five thousand dollars, support shall not be set at an amount lower than the presumptive amount of support set for combined monthly net incomes of five thousand dollars unless the court finds a reason to deviate below that amount. The economic table is advisory but not presumptive for combined monthly net incomes that exceed five thousand dollars. When combined monthly net income exceeds seven thousand dollars, the court may set support at an advisory amount of support set for combined monthly net incomes between five thousand and seven thousand dollars or the court may exceed the advisory amount of support set for combined monthly net incomes of seven thousand dollars upon written findings of fact.

RCW 26.19.071

Standards for determination of income.

(1) Consideration of all income. All income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent. Only the income of the parents of the children whose support is at issue shall be calculated for purposes of calculating the basic support obligation. Income and resources of any other person shall not be included in calculating the basic support obligation.

(2) Verification of income. Tax returns for the preceding two years and current paystubs shall be provided to verify income and deductions. Other sufficient verification shall be required for income and deductions which do not appear on tax returns or paystubs.

(3) Income sources included in gross monthly income. Except as specifically excluded in subsection (4) of this section, monthly gross income shall include income from any source, including:

- (a) Salaries;
- (b) Wages;
- (c) Commissions;
- (d) Deferred compensation;
- (e) Overtime;
- (f) Contract-related benefits;
- (g) Income from second jobs;
- (h) Dividends;
- (i) Interest;
- (j) Trust income;
- (k) Severance pay;
- (l) Annuities;
- (m) Capital gains;

-Appendix 5-

- (n) Pension retirement benefits;
- (o) Workers' compensation;
- (p) Unemployment benefits;
- (q) Spousal maintenance actually received;
- (r) Bonuses;
- (s) Social security benefits; and
- (t) Disability insurance benefits.

(4) Income sources excluded from gross monthly income. The following income and resources shall be disclosed but shall not be included in gross income:

- (a) Income of a new spouse or income of other adults in the household;
- (b) Child support received from other relationships;
- (c) Gifts and prizes;
- (d) Temporary assistance for needy families;
- (e) Supplemental security income;
- (f) General assistance; and
- (g) Food stamps.

Receipt of income and resources from temporary assistance for needy families, supplemental security income, general assistance, and food stamps shall not be a reason to deviate from the standard calculation.

(5) Determination of net income. The following expenses shall be disclosed and deducted from gross monthly income to calculate net monthly income:

- (a) Federal and state income taxes;
 - (b) Federal insurance contributions act deductions;
 - (c) Mandatory pension plan payments;
 - (d) Mandatory union or professional dues;
- Appendix 6-

(e) State industrial insurance premiums;

(f) Court-ordered spousal maintenance to the extent actually paid;

(g) Up to two thousand dollars per year in voluntary pension payments actually made if the contributions were made for the two tax years preceding the earlier of the (i) tax year in which the parties separated with intent to live separate and apart or (ii) tax year in which the parties filed for dissolution; and

(h) Normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about which there is disagreement.

Items deducted from gross income under this subsection shall not be a reason to deviate from the standard calculation.

(6) Imputation of income. The court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed based upon that parent's work history, education, health, and age, or any other relevant factors. A court shall not impute income to a parent who is gainfully employed on a full-time basis, unless the court finds that the parent is voluntarily underemployed and finds that the parent is purposely underemployed to reduce the parent's child support obligation. Income shall not be imputed for an unemployable parent. Income shall not be imputed to a parent to the extent the parent is unemployed or significantly underemployed due to the parent's efforts to comply with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child. In the absence of information to the contrary, a parent's imputed income shall be based on the median income of year-round full-time workers as derived from the United States bureau of census, current populations reports, or such replacement report as published by the bureau of census.

RCW 26.19.075

Standards for deviation from the standard calculation.

(1) Reasons for deviation from the standard calculation include but are not limited to the following:

(a) Sources of income and tax planning. The court may deviate from the standard calculation after consideration of the following:

(i) Income of a new spouse if the parent who is married to the new spouse is asking for a deviation based on any other reason. Income of a new spouse is not, by itself, a sufficient reason for deviation;

(ii) Income of other adults in the household if the parent who is living with the other adult is asking for a deviation based on any other reason. Income of the other adults in the household is not, by itself, a sufficient reason for deviation;

(iii) Child support actually received from other relationships;

(iv) Gifts;

(v) Prizes;

(vi) Possession of wealth, including but not limited to savings, investments, real estate holdings and business interests, vehicles, boats, pensions, bank accounts, insurance plans, or other assets;

(vii) Extraordinary income of a child; or

(viii) Tax planning considerations. A deviation for tax planning may be granted only if the child would not receive a lesser economic benefit due to the tax planning.

(b) Nonrecurring income. The court may deviate from the standard calculation based on a finding that a particular source of income included in the calculation of the basic support obligation is not a recurring source of income. Depending on the circumstances, nonrecurring income may include overtime, contract-related benefits, bonuses, or income from second jobs. Deviations for nonrecurring income shall be based on a review of the nonrecurring income received in the previous two calendar years.

(c) Debt and high expenses. The court may deviate from the standard calculation after consideration of the following expenses:

(i) Extraordinary debt not voluntarily incurred;

(ii) A significant disparity in the living costs of the parents due to conditions beyond their control;

(iii) Special needs of disabled children;

(iv) Special medical, educational, or psychological needs of the children; or

(v) Costs incurred or anticipated to be incurred by the parents in compliance with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child.

(d) Residential schedule. 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. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.

(e) Children from other relationships. The court may deviate from the standard calculation when either or both of the parents before the court have children from other relationships to whom the parent owes a duty of support.

(i) The child support schedule shall be applied to the mother, father, and children of the family before the court to determine the presumptive amount of support.

(ii) Children from other relationships shall not be counted in the number of children for purposes of determining the basic support obligation and the standard calculation.

(iii) When considering a deviation from the standard calculation for children from other relationships, the court may consider only other children to whom the parent owes a duty of support. The court may consider court-ordered payments of child support for children from other relationships only to the extent that the support is actually paid.

(iv) When the court has determined that either or both parents have children from other relationships, deviations under this section shall be based on consideration of the total circumstances of both households. All child support obligations paid, received, and owed for all children shall be disclosed and considered.

(2) All income and resources of the parties before the court, new spouses, and other adults in the households shall be disclosed and considered as provided in this section. The presumptive amount of support shall be determined according to the child support schedule. Unless specific reasons for deviation are set forth in the written findings of fact and are supported by the evidence, the court shall order each parent to pay the amount of support determined by using the standard calculation.

(3) The court shall enter findings that specify reasons for any deviation or any denial of a party's request for any deviation from the standard calculation made by the court. The court shall not consider reasons for deviation until the court determines the standard calculation for each parent.

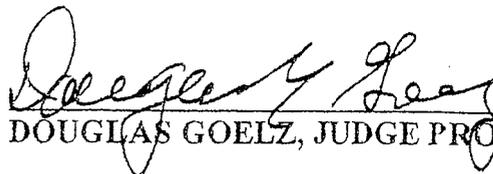
(4) When reasons exist for deviation, the court shall exercise discretion in considering the extent to which the factors would affect the support obligation.

(5) Agreement of the parties is not by itself adequate reason for any deviations from the standard calculation.

a reduction without further information and complete disclosure of the circumstances which would justify such disparate treatment.

The Court affirms its reduction for overnights at \$30.00 per month.

DATED this 26th day of January, 2007.


DOUGLAS GOELZ, JUDGE PRO TEM

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

GINA FLEMETIS,)	Cause No. 02-3-00084-9
)	
Petitioner)	MEMORANDUM DECISION
)	
and)	
)	
ANDREW FLEMETIS,)	
)	
Respondent.)	
_____)	

In 2004, the husband made \$50,245. In 2005, the husband made \$46,877. In 2006 the husband made \$49, 742.

In his work sheet he claims his gross income as \$3,121.21 per month or a yearly income of \$37,455. To support his claim the husband has submitted a pay stub for only the period between December 18, 2006 and December 31, 2006. Moreover, the year to Date figures are clearly wrong. The Court is unable to find any support for the \$3,121 figure claimed by the father. For this reason alone the father's motion and petition are denied.

The gross disparity in income between the father and the mother, even taking into consideration the father's additional obligations is so great that a child spending ½ his

EXHIBIT B

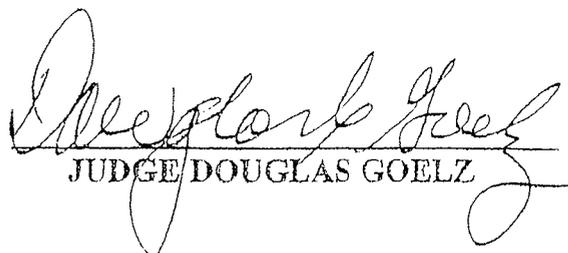
time between the households cannot but help observe the difference in living style. The Court believes the mother is able to provide just enough beyond the basic needs of the child to avoid an impact on her relationship with Bailey. Nothing in the Court's order of January 3, 2003 should change except:

- 1) Automatic wage withholding should be ordered and;
- 2) The \$350 should be reduced to \$320 based on the admitted extended time Bailey spends with the Petitioner.

The Motion for Reconsideration is denied. No worksheet is necessary and only an order modifying child support shall be entered.

The parties are welcome to submit proposed findings, however, such findings are usually only necessary when testimony is taken. The Court may well decline to sign findings when this ruling is based on the record.

The Court's prior memorandum is incorporated herein as though fully set forth. out. Decided this 22nd day of February, 2007.


JUDGE DOUGLAS GOELZ

Washington State Child Support Schedule Worksheets (CSW)

Mother GINA FLEMETIS (WILSON) Father ANDREW FLEMETIS

County PACIFIC Superior Court Case Number 02-3-00084-9

Children and Ages: B.C.F. 8 YEARS OLD		
Part I: Basic Child Support Obligation (See Instructions, Page 5)		
1. Gross Monthly Income	Father	Mother
a. Wages and Salaries <small>Formula is W-2 amount divided by 12</small>	\$ 4005.00	\$ 2080.00
b. Interest and Dividend Income	\$ 0	\$ 0
c. Business Income	\$ 0	\$ 0
d. Spousal Maintenance Received	\$ 0	\$ 0
e. Other Income	\$ 0	\$ 0
f. Total Gross Monthly Income (add lines 1a through 1e)	\$ 4005.00	\$ 2080.00
2. Monthly Deductions from Gross Income		
a. Income Taxes (Federal and State) <small>Via 2006 W-2</small>	\$ 461.00	\$ 248.00
b. FICA (Soc. Sec. + Medicare)/Self-Employment Taxes	\$ 320.00	\$ 129.00
c. State Industrial Insurance Deductions	\$ 60.00	\$ 32.00
d. Mandatory Union/Professional Dues	\$ 59.00	\$ 31.00
e. Pension Plan Payments	\$ 68.00	\$ 0.00
f. Spousal Maintenance Paid	\$ 0.00	\$ 0.00
g. Normal Business Expenses	\$ 0.00	\$ 0.00
h. Total Deductions from Gross Income (add lines 2a through 2g)	\$ 968.00	\$ 440.00
3. Monthly Net Income (line 1f minus 2h)	\$ 3037.00	\$ 1640.00
4. Combined Monthly Net Income (add father's and mother's monthly net incomes from line 3) (If combined monthly net income is less than \$600, skip to line 7.)	\$ 4677.00	
5. Basic Child Support Obligation (enter total amount in box ----- -->) Child #1 <u>B.C.F.</u> USING 2 Child TABLE	\$ 545.00	
	Father	Mother
6. Proportional Share of Income (each parent's net income from line 3 divided by line 4)	.649	.350
7. Each Parent's Basic Child Support Obligation (multiply each number on line 6 by line 5) (If combined net monthly income on line 4 is less than \$600, enter each parent's support obligation of \$25 per child. Number of children: _____. Skip to line 15a and enter this amount.)	\$ 353.70	\$ 190.75
Part II: Health Care, Day Care, and Special Child Rearing Expenses (See Instructions, Page 7)		

8. Health Care Expenses		
a. Monthly Health Insurance Premiums Paid for Child(ren)	\$ 0.00	\$ 95.00
b. Uninsured Monthly Health Care Expenses Paid for Child(ren)	\$ 0.00	\$ 10.00
c. Total Monthly Health Care Expenses (line 8a plus line 8b)	\$ 0.00	\$ 105.00
d. Combined Monthly Health Care Expenses (add father's and mother's totals from line 8c)		\$ 105.00
e. Maximum Ordinary Monthly Health Care (multiply line 5 times .05)		\$ 35.05
f. Extraordinary Monthly Health Care Expenses (line 8d minus line 8e., if "0" or negative, enter "0")		\$ 69.95
9. Day Care and Special Child Rearing Expenses		
a. Day Care Expenses	\$ 0.00	\$ 46.10
b. Education Expenses	\$ 0.00	\$ 0.00
c. Long Distance Transportation Expenses	\$ 0.00	\$ 0.00
d. Other Special Expenses (describe)	\$ 0.00	\$ 0.00
	\$	\$
	\$	\$
e. Total Day Care and Special Expenses (Add lines 9a through 9d)	\$ 0.00	\$ 46.10
10. Combined Monthly Total Day Care and Special Expenses (add father's and mother's day care and special expenses from line 9e)		\$ 46.10
11. Total Extraordinary Health Care, Day Care, and Special Expenses (line 8f plus line 10)		\$ 116.05
12. Each Parent's Obligation for Extraordinary Health Care, Day Care, and Special Expenses (multiply each number on line 6 by line 11)	\$ 75.32	\$ 40.62
Part III: Gross Child Support Obligation		
13. Gross Child Support Obligation (line 7 plus line 12)	\$ 429.02	\$ 231.37
Part IV: Child Support Credits (See Instructions, Page 7)		
14. Child Support Credits		
a. Monthly Health Care Expenses Credit	\$ 0.00	\$ 0.00
b. Day Care and Special Expenses Credit	\$ 0.00	\$ 0.00
c. Other Ordinary Expenses Credit (describe)		
	\$ 0.00	\$ 0.00
d. Total Support Credits (add lines 14a through 14c)	\$ 0.00	\$ 0.00
Part V: Standard Calculation/Presumptive Transfer Payment (See Instructions, Page 8)		
15. Standard Calculation		
	Father	Mother
a. Amount from line 7 if line 4 is below \$600. Skip to Part VI.	\$ 429.02	\$ 231.37
b. Line 13 minus line 14d, if line 4 is over \$600 (see below if appl.)	\$ 429.02	\$ 231.37
Limitation standards adjustments		

c. Amount on line 15b adjusted to meet 45% net income limitation	\$	\$
d. Amount on line 15b adjusted to meet need standard limitation	\$	\$
e. Enter the lowest amount of lines 15b, 15c or 15d:	\$	\$

Part VI: Additional Factors for Consideration (See Instructions, Page 8)

16. Household Assets (List the estimated present value of all major household assets.)	Father's Household	Mother's Household
a. Real Estate Taken from Pac. Co. Assessor Website	\$ 71,900.00	\$ 0.00
b. Stocks and Bonds	\$ 0.00	\$ 0.00
c. Vehicles Father-Ford Explorer & Toyota PU/Mother Ford PU	\$ 15,000.00	\$ 6,000.00
d. Boats	\$ 0.00	\$ 0.00
e. Pensions/IRAs/Bank Accounts Father Retirement Pension	\$ 4,973.00	\$ 0.00
f. Cash	\$ 24.00	\$ 50.00
g. Insurance Plans	\$ 0.00	\$ 0.00
h. Other (describe) Sharon Flemetis Income not included here	\$ 0.00	\$ 0.00
	\$	\$
	\$	\$
17. Household Debt (List liens against household assets, extraordinary debt.)		
Not supplied by Father so Mother not listing either	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
18. Other Household Income		
a. Income Of Current Spouse (if not the other parent of this action) Name <u>SHARON FLEMETIS</u> <u>From Father's Financial Declaration Sheet</u>	\$ 2,333.00	\$
Name _____	\$	\$
b. Income Of Other Adults In Household Name _____	\$	\$
Name _____	\$	\$
c. Income Of Children (if considered extraordinary) Name _____	\$	\$
Name _____	\$	\$

d. Income From Child Support Name _____ GINA FLEMETIS (WILSON)	\$ 0.00	\$ 320.00
	\$	\$

Other Household Income (continued)	Father's Household	Mother's Household
e. Income From Assistance Programs Program _____ Program _____	\$ 0.00 \$	\$ 0.00 \$
f. Other Income (describe) _____ _____ _____	\$ 0.00 \$	\$ 0.00 \$
19. Non-Recurring Income (describe) _____ _____	\$ 0.00 \$	\$ 0.00 \$
20. Child Support Paid For Other Children		
Name/age: <u>ASHTON</u> (Biological child from former relationship for which Father pays support)	\$ 387.00	\$
Name/age: _____	\$	\$
Name/age: _____	\$	\$
21. Other Children Living In Each Household (First names and ages)		
KADIE MILLER (FLEMETIS) - 4 YRS.		
KAYLA MILLER - (FLEMETIS) - 7 YRS.		
(adopted children with new spouse)		
22. Other Factors For Consideration		
JUDGMENT OF JANUARY 8 HEARING DETERMINED THAT ADOPTED CHILDREN SHOULD NOT BE FACTORED IN THE CHILD SUPPORT FORMULA		

WASHINGTON STATE CHILD SUPPORT SCHEDULE DEFINITIONS AND STANDARDS

- Veterans' disability pensions: Veterans' disability pensions or regular compensation for disability incurred in or aggravated by service in the United States armed forces paid by the Veterans' Administration shall be disclosed to the court. The court may consider either type of compensation as disposable income for purposes of calculating the child support obligation.
4. Income sources excluded from gross monthly income: The following income and resources shall be disclosed but shall not be included in gross income: income of a new spouse or income of other adults in the household; child support received from other relationships; gifts and prizes; temporary assistance for needy families; Supplemental Security Income; general assistance and food stamps. Receipt of income and resources from temporary assistance for needy families, Supplemental Security Income, general assistance and food stamps shall not be a reason to deviate from the standard calculation.
- VA aid and attendant care: Aid and attendant care payments to prevent hospitalization paid by the Veterans Administration solely to provide physical home care for a disabled veteran, and special compensation paid under 38 U.S.C. Sec. 314(k) through (r) to provide either special care or special aids, or both to assist with routine daily functions shall be disclosed. The court may not include either aid or attendant care or special medical compensation payments in gross income for purposes of calculating the child support obligation or for purposes of deviating from the standard calculation.
- Other aid and attendant care: Payments from any source, other than veterans' aid and attendance allowance or special medical compensation paid under 38 U.S.C. Sec. 314(k) through (r) for services provided by an attendant in case of a disability when the disability necessitates the hiring of the services or an attendant shall be disclosed but shall not be included in gross income and shall not be a reason to deviate from the standard calculation.
5. Determination of net income: The following expenses shall be disclosed and deducted from gross monthly income to calculate net monthly income: federal and state income taxes (see the following paragraph); federal insurance contributions act deductions (FICA); mandatory pension plan payments; mandatory union or professional dues; state industrial insurance premiums; court-ordered spousal maintenance to the extent actually paid; up to two thousand dollars per year in voluntary pension payments actually made if the contributions were made for the two tax years preceding the earlier of the tax year in which the parties separated with intent to live separate and apart or the tax year in which the parties filed for dissolution; and normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about which there is a disagreement. Items deducted from gross income shall not be a reason to deviate from the standard calculation.
- Allocation of tax exemptions: The parties may agree which parent is entitled to claim the child or children as dependents for federal income tax exemptions. The court may award the exemption or exemptions and order a party to sign the federal income tax dependency exemption waiver. The court may divide the exemptions between the parties, alternate the exemptions between the parties or both.
6. Imputation of income: The court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed based upon that parent's work history, education, health and age or any other relevant factors. A court shall not impute income to a parent who is gainfully employed on a full-time basis, unless the court finds that the parent is voluntarily underemployed and finds that the parent is purposely underemployed to reduce the parent's child support obligation. Income shall not be imputed for an unemployable parent. Income shall not be imputed to a parent to the extent the parent is unemployed or significantly underemployed due to the parent's efforts to comply with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child. In the absence of information to the contrary, a parent's imputed income shall be based on the median income of year-round full-time workers as derived from the United States Bureau of Census, current population reports, or such replacement report as published by the Bureau of Census. (See "Approximate Median Net Monthly Income" chart on page 5.)

ALLOCATION STANDARDS

1. Basic child support: The basic child support obligation derived from the economic table shall be allocated between the parents based on each parent's share of the combined monthly net income.
2. Health care expenses: Ordinary health care expenses are included in the economic table. Monthly health care expenses that exceed 5 percent of the basic support obligation shall be considered extraordinary health care expenses. Extraordinary health care expenses shall be shared by the parents in the same proportion as the basic support obligation.
3. Day care and special child rearing expenses: Day care and special child rearing expenses, such as tuition and long distance transportation costs to and from the parents for visitation purposes, are not included in the economic table. These expenses shall be shared by the parents in the same proportion as the basic child support obligation. RCW 26.19.080
4. The court may exercise its discretion to determine the necessity for and the reasonableness of all amounts ordered in excess of the basic child support obligation.

LIMITATIONS STANDARDS

1. Limit at 45 percent of a parent's net income: Neither parent's total child support obligation may exceed 45 percent of net income except for good cause shown. Good cause includes but is not limited to possession of substantial wealth, children with day care expenses, special medical need, educational need, psychological need and larger families.
2. Income below six hundred dollars: When combined monthly net income is less than six hundred dollars, a support order of not less than twenty-five dollars per child per month shall be entered for each parent unless the obligor parent establishes that it would be unjust or inappropriate to do so in that particular case. The decision whether there is a sufficient basis to go below the

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

In re:

No. 36109-4-II

ANDREW FLEMETIS Appellant,

AFFIDAVIT OF MAILING

and

GINA WILSON, FORMERLY FLEMETIS
Respondent.

STATE OF WASHINGTON)
)ss:
COUNTY OF PACIFIC)

I, GINA WILSON fna GINA FLEMETIS Declare:

ON THS DAY, NOVEMBER 9, 2007, I DID PLACE ONE ORIGINAL AND ONE COPY OF THE RESPONDENT BRIEF AND ONE COPY OF THE AFFIDAVIT OF MAILING IN THE MAIL TO:

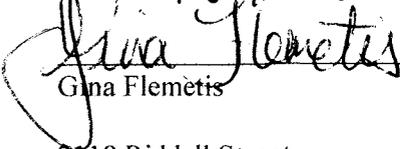
THE WASHINGTON STATE COURT OF APPEALS – DIV. II
950 BROADWAY, SUITE 300
TACOMA, WA 98402-4454

THE DOCUMENTS WERE SENT CERTIFIED MAIL TO ASSURE TIMELY DELIVERY

ON THIS SAME DAY, NOVEMBER 9, 2007, I PLACED IN THE U.S. MAIL AT THE RAYMOND POST OFFICE A COPY OF THE RESPONDENT BRIEF MAILING TO :

MICHEAU AND ASSOCIATES
P.O. BOX 2019
COSMOPOLIS, WA 98537

Signed at Raymond, [City] WA [State] on 11-9-07 [Date].



Gina Fletch

2118 Riddell Street
Raymond, WA 98577