

NO. 42645-5-II

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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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In Re the Marriage of:

TRISHA ROBIN BRADLEY,

Respondent,

v.

FRANCIS THOMAS BRADLEY,

Appellant.

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REPLY BRIEF OF APPELLANT  
FRANCIS THOMAS BRADLEY

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John A. McKerricher, WSBA No. 8488  
P.O. Box 1123  
Chehalis, WA 98532  
(360) 748-6641

Attorney for Appellant

**ORIGINAL**

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## I. ARGUMENT

As noted in his initial brief, Mr. Bradley contends on appeal that the revision court erred in denying his motion for revision because the 2008 Order of Child Support did not become the law of the case, and the court erred in its interpretation and application of RCW 26.19.071(6). (Brief of Appellant, p.2) In reply to Respondent's brief, Mr. Bradley relies upon the arguments presented in his initial brief and supplements those arguments in response to the issues addressed in Respondent's brief.

### A. Facts Not in Record

In her brief, Respondent does not make a separate statement of the case as, pursuant to RAP 10.3(b), she "is satisfied with the statement in the brief of appellant." (*See* Brief of Respondent, p.2) However, Respondent disingenuously argues facts that are not in the record on appeal and misrepresents the record included on appeal.

Respondent argues that "[t]hese proceedings were commenced to enforce the terms of the 2008 Order that Mr. Bradley originally requested." (Brief of Respondent, p.1) In fact, Respondent's Petition for Modification of Child Support does not request enforcement of the 2008 Order but rather modification of the order based upon the fact that Mr. Bradley had obtained his degree. (CP 31-33) Her petition does not even mention the 2008 Order other than to reference its existence as the most

recent support order. (CP 31) Regarding Respondent's averment that Mr. Bradley requested the terms of the 2008 Order, there is nothing in the record to support the fact that the term at issue, Paragraph 3.22, was requested by Mr. Bradley.

Contrary to Respondent's position, this is not a "back door" appeal. Respondent misunderstands the procedural posture of this case. Mr. Bradley did not appeal the 2008 Order of Child Support. However, Respondent filed a Petition for Modification of Child Support. (CP 31-33) Respondent apparently argues that Mr. Bradley was not entitled to argue in response to her petition that the current law should be applied to his case. That is what Mr. Bradley argued below and that is what he maintains on appeal. The revision court erred because it failed to apply the law correctly.

**B. Law of the Case Doctrine Does Not Apply**

Mr. Bradley argued in his initial brief that the revision court inappropriately concluded that Paragraph 3.22 of the 2008 Order of Child Support was the law of the case because the law of the case doctrine does not apply. (Brief of Appellant, p.21) In response to Mr. Bradley's argument, Respondent contends that "[i]n the present case the revision court made no such finding or conclusion that paragraph 3.22 was the law of the case." (Brief of Respondent, p.4) As it appears that Respondent

agrees that the law of the case doctrine does not apply, Mr. Bradley need not address that issue further and will rely upon his arguments set forth in his initial brief. To the extent that Respondent argues it was appropriate for the revision court to rely upon the 2008 Order of Child Support, Mr. Bradley contends that such reliance was in error because the basis for that reliance was the law of the case doctrine, which does not apply. In the end, Mr. Bradley argues that the court commissioner relied upon a provision that went contrary to the law, and the revision court erred when it failed to revise the commissioner's ruling to correctly apply existing law.

**C. Priorities of RCW 26.19.071(6)**

The crux of this appeal lies in the interpretation and application of RCW 26.19.071(6). Respondent argues that RCW 26.19.071(6) is "clear" and that because Mr. Bradley submitted information regarding his actual earnings, the priorities set forth in the statute do not apply. (Brief of Respondent, pp.4-7) Mr. Bradley maintains that the commissioner, and subsequently the revision court, erred in imputing income based upon the median net monthly income rather than upon his full-time earnings at the current rate of pay as required by the statute. While Mr. Bradley again relies upon his arguments set forth in his initial brief, some response is necessary.

When statutory language is unclear, the appellate court may review legislative history to determine the scope and purpose of a statute. *Wash. Fed'n of State Employees v. State*, 98 Wash.2d 677, 684-85, 658 P.2d 634 (1983). Strained meanings and absurd results should be avoided. *State v. Neher*, 112 Wash.2d 347, 351, 771 P.2d 330 (1989). “The court will avoid literal reading of a statute which would result in unlikely, absurd, or strained consequences.” *Tinget v. Haisch*, 159 Wn.2d 652, 663-64, 152 P.3d 1020 (2007) (quotations omitted). “A reading that produces absurd results must be avoided because it will not be presumed that the legislature intended absurd results.” *Id.* (quotations omitted).

In the context of the statutory scheme of RCW 26.19.071, the language set forth in subsection 6 is ambiguous. Moreover, the interpretation of the statute advanced by Respondent would produce absurd results. Under Respondent’s reasoning, Mr. Bradley would have been able to utilize the priorities set forth in RCW 26.19.071(6) had he simply ignored the mandate in subsections 1 and 2 which required him to provide his financial information. Such a reading would encourage parents to blatantly disregard the requirement to provide financial information and perhaps conceal their financial information in an effort to take advantage of the priorities in subsection 6. It cannot be presumed that

the legislature intended such absurd results. *See Tinget v. Haisch*, 159 Wn.2d at 663-64, 152 P.3d 1020.

As noted in Mr. Bradley's initial brief, the most reasonable reading of RCW 26.19.071(6) is that income is imputed according to the priorities set forth in the statute when a parent is voluntarily unemployed, voluntarily underemployed, or when the court has no records at all of a parent's earnings. (Brief of Appellant, p.28) Any other reading would allow a court to disregard the evidence before it and impute income at whatever level it chooses. Indeed, had Mr. Bradley obtained a part-time job making \$150,000.00 per year and submitted evidence of his actual earnings to the court, Respondent would be requesting that income be imputed based upon the priorities set forth in the statute, namely full-time earnings at the current rate of pay rather than median net monthly income. What the statute requires is that courts utilize the list of priorities based upon the information and evidence before it. Here, the court commissioner and the revision court ignored the evidence and the statute and arbitrarily imputed income at the median net monthly income when his actual hourly income was known to the court.

As noted in his initial brief, Mr. Bradley's interpretation of the statute is supported by the statutory scheme of RCW 26.19, the instructions for the worksheets, the forms utilized by the courts and

approved by the administrative office of the courts, and the legislative history of the statute. (*See* Brief of Appellant, pp.28-34)

Mr. Bradley is requesting that this Court clarify the meaning of RCW 26.19.071(6) and determine that the revision court erred in its interpretation and application of the statute and in denying his motion for revision.

**D. Attorney's Fees on Appeal**

Mr. Bradley requests, pursuant to RCW 26.09.140 and RAP 18.1, that this Court award him attorney's fees on appeal. Respondent also requests attorney's fees on appeal under RCW 26.09.140 and argues that awarding her attorney's fees on appeal would be "fair and equitable under these circumstances." (Brief of Respondent, pp.7-8)

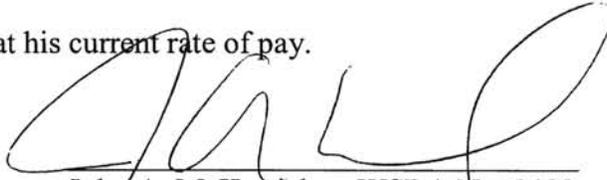
Mr. Bradley asserts that "fair and equitable" is not the standard for an award of attorney's fees. Rather in determining whether attorney fees should be awarded, "the court should examine the arguable merit of the issues on appeal and the financial resources of the respective parties." *In re Marriage of Booth*, 114 Wn.2d 772, 779, 791 P.2d 519 (1990). As noted in *In re Marriage of Schellenberger*, 80 Wash.App. 71, 87, 906 P.2d 968 (1995), "[a]t both the trial and appellate levels in a dissolution or postdissolution proceeding, a court asked to apportion attorney fees must consider the parties' relative need and ability to pay."

## II. CONCLUSION

This Court should determine that the revision court erred in denying Mr. Bradley's motion for revision of the superior court commissioner's ruling. The law of the case doctrine does not apply. The revision court, and the superior court commissioner, erred in the interpretation and application of RCW 26.19.071(6). The revision court, and the superior court commissioner, erred in using the median net monthly income table to impute income to Mr. Bradley, as Mr. Bradley provided sufficient information to impute his income based upon the first priority set forth in the statute.

For the foregoing reasons, as well as the reasons set forth in Mr. Bradley's initial brief, Mr. Bradley respectfully requests that this Court reverse the revision court and remand the case for entry of an order granting his motion for revision of the commissioner's ruling and to correctly apply RCW 26.19.071(6) to impute income to Mr. Bradley based

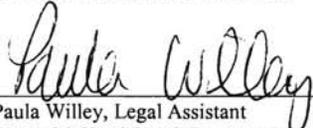
upon full-time earnings at his current rate of pay.



John A. McKerricher, WSBA No. 8488  
Attorney for Appellant  
P.O. Box 1123  
Chehalis, WA 98532

CERTIFICATE OF MAILING

I hereby certify that on April 5, 2012, I deposited in the U.S. mail a properly stamped and addressed envelope directed to the attorneys of record for the respondent containing a copy of the document to which this certification is attached.



Paula Willey, Legal Assistant  
Mano, McKerricher & Paroutaud, Inc., P.C.



**MANO, MCKERRICHER & PAROUTAUD**  
ATTORNEYS AT LAW

INCORPORATED, P.C.

Joseph M. Mano, Jr.  
John A. McKerricher  
Richard A. Paroutaud  
Jennifer R. Groberg  
Samuel L. Groberg  
Bart J. Ricks

20 S.W. 12th Street  
P.O. Box 1123  
Chehalis, WA 98532  
Phone: (360) 748-6641  
Fax: (360) 748-6644  
[www.chehalislaw.com](http://www.chehalislaw.com)

April 5, 2012

✓ David C. Ponzoha, Court Clerk  
✓ Cheryl Moreno, Case Manager  
Washington State Court of Appeals  
Division II  
950 Broadway, Suite 300  
Tacoma, WA 98402-4454

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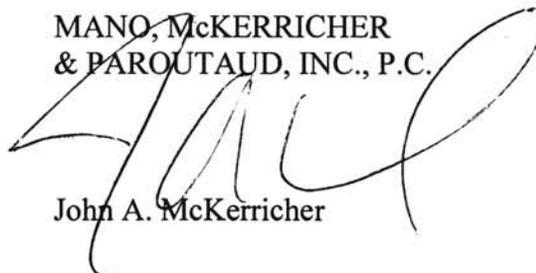
**Re: Case #42645-5-II**  
**Marriage of Trisha Bradley, Respondent v. Francis Bradley, Appellant**  
**Case Manager: Cheryl**

Dear Mr. Ponzoha and Ms. Moreno:

Enclosed please find the original and one copy of our Reply Brief of Appellant, Francis Thomas Bradley. I would appreciate confirmation, by way of a telephone call to my assistant, Paula, that you have received our Reply Brief and that it has been filed with the Court of Appeals. If you should have any questions, please contact me.

Very truly yours,

MANO, MCKERRICHER  
& PAROUTAUD, INC., P.C.

  
John A. McKerricher

JAM/paw  
Enclosures

cc: Francis Bradley w/enclosure  
Joseph P. Enbody w/enclosure