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COURT OF APPEALS  
DIVISION II  
STATE OF WASHINGTON  
BY           
DEPUTY

NO. 44263-9-II

The Court of Appeals  
Division II  
Of the State of Washington

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JOHN ERIC NELSON

Appellant/Petitioner,

v.

CONNIE LOUISE ACKER

Respondent.

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APPEAL FROM THE SUPERIOR COURT FOR SKAMANIA COUNTY

THE HONORABLE BRIAN ALTMAN

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BRIEF OF RESPONDENT

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Connie L. Acker, Respondent  
3518 SW Corbett Avenue  
Portland, OR 97239  
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Pro se

TABLE OF CONTENTS

	Page
A. <u>ISSUES PRESENTED</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	2
1. PROCEDURAL FACTS.....	2
2. SUBSTANTIVE FACTS.....	2
C. <u>ARGUMENT</u> .....	3
1. THE TRIAL COURT EXERCISED SOUND DISCRETION IN REQUIRING JOHN TO SUPPORT BAILEY AND HAYDEN BEYOND THE AGE OF 18 IN THE FORM OF POST SECONDARY EDUCATIONAL SUPPORT.....	3
2. ANY CONCEIVABLE ERROR IS MOOT BECAUSE THE TRIAL COURT MADE NO DECISION AT TRIAL AS TO THE CHILDREN'S COMPLIANCE WITH RCW 26.19.090(4) .....	5
3. THE TRIAL COURT EXERCISED SOUND DISCRETION IN ORDERING JOHN TO PAY BAILEY AND HAYDEN RETROACTIVE POST SECONDARY EDUCATIONAL SUPPORT.....	6
4. ANY CONCEIVABLE ERROR IS MOOT BECAUSE THE TRIAL COURT MADE NO DECISION AT TRIAL AS TO BAILEY'S ALLEGED EMANCIPATION.....	6
5. THE TRIAL COURT EXERCISED SOUND DISCRETION IN CALCULATING JOHN'S INCOME IN ORDER TO CALCULATE THE GUIDELINES FOR POST SECONDARY EDUCATIONAL SUPPORT.....	7

6. ANY CONCEIVABLE ERROR IS MOOT  
BECAUSE THE TRIAL COURT MADE NO  
DECISION AT TRIAL AS TO THE SUBPOENA  
DUCES TECUM SERVED ON CONNIE AFTER  
TRIAL..... 9

7. ANY CONCEIVABLE ERROR IS MOOT  
BECAUSE THE TRIAL COURT MADE NO  
DECISION AT TRIAL AS TO THE WASHINGTON  
STATE DIVISION OF CHILD SUPPORT'S  
ALLEGED MISCONDUCT..... 10

D. CONCLUSION..... 10

E. APPENDIX..... A

TABLE OF AUTHORITIES

Rules and Regulations

Page

Washington State:

RCW 26.18.050.....	10
RCW 26.19.071.....	7
RCW 26.19.090.....	1, 4, 5
Chapter 13.64 RCW.....	7

**A. ISSUES PRESENTED**

1. Whether the trial court exercised sound discretion in requiring John Eric Nelson (John) to support his children Bailey Louise Acker formerly known as Bailey Acker Nelson (Bailey) and Hayden Acker Nelson (Hayden) beyond the age of 18 in the form of post secondary educational support.

2. Whether the court erred by not suspending post secondary educational support for Bailey and/or Hayden for failing to comply with RCW 26.19.090(4).

3. Whether the court erred in ordering John to pay Bailey and Hayden retroactive post secondary educational support.

4. Whether the court erred in ordering John to pay post secondary educational support after Bailey changed her name.

5. Whether the court erred in calculating John's income for purposes of calculating support.

6. Whether the court erred by failing to enforce John's Subpoena Duces Tecum served on Connie after trial.

7. Whether the Division of Child Support violated John's rights regarding enforcement and collection of child support.

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

John supported Bailey and Hayden in the form of court ordered child support prior to the children turning age 18.

The trial court ordered John to support Bailey and Hayden beyond the age of 18 in the form of post secondary educational support.

**2. SUBSTANTIVE FACTS**

John and Connie Louise Acker (Connie) were married 13 years when their divorce was finalized in 1997. The parties had two children, namely Bailey and Hayden.

John graduated from the University of Portland with a Bachelor's Degree in Criminal

Justice. Connie graduated from Clark Community College with an Associate's Degree in Office Administration.

John has been a postal clerk with the U.S. Postal Service (USPS) for 27 years making approximately \$55,000 per year in 2010 and 2011. Connie has been a legal assistant for 30 years making approximately \$48,000 per year in 2010 and 2011.

**C. ARGUMENT**

**1. THE TRIAL COURT EXERCISED SOUND DISCRETION IN REQUIRING JOHN TO SUPPORT BAILEY AND HAYDEN BEYOND THE AGE OF 18 IN THE FORM OF POST SECONDARY EDUCATIONAL SUPPORT.**

John argues that the trial court erred and abused its authority in ordering him to support Bailey and Hayden beyond age 18 in the form of post secondary educational support. John's argument is not supported by the record and this claim should be rejected.

The trial court exercised sound discretion in applying the standards for post secondary

educational support under RCW 26.19.090. The trial court found that there was a history of college education in the family and that there was an expectation for the children to attend college. RP (08/03/12) 22. The trial court reviewed the children's prospects and desires and the nature of the post secondary education sought. RP (08/03/12) 21-22. The trial court also reviewed the parents' standard of living and current, future resources and level of education. RP (08/03/12) 35-36, 20-21.

John argues that ordering post secondary educational support has been a financial hardship on him. The trial court reviewed John's financial statements and W-2's and found that John was making an adequate amount of money to provide support for his children in the form of post secondary educational support.

**2. ANY CONCEIVABLE ERROR IS MOOT BECAUSE THE TRIAL COURT MADE NO DECISION AT TRIAL AS TO THE CHILDREN'S COMPLIANCE WITH RCW 26.19.090(4).**

John argues that the trial court erred in not suspending post secondary educational support while the children were allegedly not in compliance with RCW 26.19.090(4). John's argument is not supported by the record and this claim should be rejected.

Bailey attempted, to the best of her ability, to comply with RCW 26.19.090(4) during the period in question and thereafter during her four-year college career. Hayden has complied with the requirements of RCW 26.19.090(4) by personally providing his grades for Fall semester, 2012 to John. Hayden's grades were provided to John through the Washington State Division of Child Support for Spring semester, 2013 in early June, 2013.

**3. THE TRIAL COURT EXERCISED SOUND DISCRETION IN ORDERING JOHN TO PAY BAILEY AND HAYDEN RETROACTIVE POST SECONDARY EDUCATIONAL SUPPORT.**

John argues that the trial court erred or abused its authority in ordering him to pay Bailey and Hayden retroactive post secondary educational support based upon speculation that the children would attend college. John's argument is not supported by the record and this claim should be rejected.

At trial, Connie presented the trial court and John with Hayden's Fall, 2012 registration to Montana State University - Billings. RP (08/03/12) 4. The court entered this document in the record as Exhibit 1. CP 1. At trial, John did not request Bailey's Fall, 2012 registration but it was provided to him at a later date.

**4. ANY CONCEIVABLE ERROR IS MOOT BECAUSE THE TRIAL COURT MADE NO DECISION AT TRIAL AS TO BAILEY'S ALLEGED EMANCIPATION.**

John argues that the trial court erred in ruling that he pay Bailey post secondary educational support and provide medical coverage

for Bailey after she emancipated herself. John's argument is not supported by the record and this claim should be rejected.

John provided no facts at trial regarding Bailey's alleged emancipation.

Bailey did not legally emancipate herself as defined by Chapter 13.64 RCW, she simply changed her name.

**5. THE TRIAL COURT EXERCISED SOUND DISCRETION IN CALCULATING JOHN'S INCOME IN ORDER TO CALCULATE THE GUIDELINES FOR POST SECONDARY EDUCATIONAL SUPPORT.**

John argues that the trial court erred in including income from a second job in his gross income when it calculated his income at a 2009 support modification hearing.

John cited House Bill 1794, which became RCW 26.19.071.

RCW 26.19.071(4)(i) states:

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

(i) Overtime or income from second jobs beyond forty hours per week averaged over a twelve-month period worked to provide for a

current family's needs, to retire past relationship debts, or to retire child support debt, when the court finds the income will cease when the party has paid off his or her debts.

At trial, the trial court reminded John that, "there's a minimum hourly weekly requirement in that statute." RP (08/03/12) 7. The trial court exercised sound discretion in 2009 in calculating John's income when it allowed John's gross income to include earnings from his second job. The court indicated at trial in 2012 that John had slept on his rights by not bringing the court's alleged miscalculation of his income in 2009 before the court by requesting a motion for reconsideration. RP (08/03/12) 13-14.

The trial court also exercised sound discretion in calculating John's gross income at trial in 2012 when it did not consider his earnings from his second job as part of his gross income. John testified at trial in 2012 that he was on an "on-call status" with his second job and had received very few hours recently. RP (08/03/12) 6,30. At the time of trial in 2012,

the trial court found that John's second job was "speculative and part time" and should not be included in his gross income. RP (08/03/12) 35.

**6. ANY CONCEIVABLE ERROR IS MOOT BECAUSE THE TRIAL COURT MADE NO DECISION AT TRIAL AS TO THE SUBPOENA DUCES TECUM SERVED ON CONNIE AFTER TRIAL.**

John argues that the trial court erred in not enforcing the Subpoena Duces Tecum served on Connie. John's argument is not supported by the record and this claim should be rejected.

The trial court heard this case on August 3, 2012. The Subpoena Duces Tecum was served on Connie on or about October 25, 2013. The documents requested under the Subpoena Duces Tecum were not requested timely for trial. The hearing scheduled with the court on November 2, 2012, was a hearing simply to present the final orders from the court's ruling on August 3, 2012, not to retry the case.

**7. ANY CONCEIVABLE ERROR IS MOOT BECAUSE THE TRIAL COURT MADE NO DECISION AT TRIAL AS TO THE WASHINGTON STATE DIVISION OF CHILD SUPPORT'S ALLEGED MISCONDUCT.**

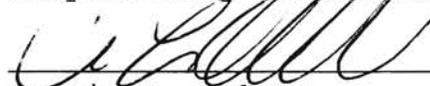
John argues that the Washington State Division of Child Support erred in enforcing RCW 26.18.050, violated his rights, liened his property and noticed the credit reporting agencies. John's argument is not supported by the record and this claim should be rejected.

**D. CONCLUSION**

Many of the arguments and exhibits in John's brief are not part of the trial court record on review and should be rejected by the Appellate Court. This Court should uphold the Trial Court's rulings in their entirety.

DATED: August 21, 2013

Respectfully submitted,



Connie L. Acker

Respondent, pro se

APPENDIX

	Page
RCW 26.18.050.....	A-1
RCW 26.19.071.....	A-2
RCW 26.19.090.....	A-3

RCW 26.18.050

Failure to comply with support or maintenance order — Contempt action — Order to show cause — Bench warrant — Continuing jurisdiction.

(1) If an obligor fails to comply with a support or maintenance order, a petition or motion may be filed without notice under RCW 26.18.040 to initiate a contempt action as provided in chapter 7.21 RCW. If the court finds there is reasonable cause to believe the obligor has failed to comply with a support or maintenance order, the court may issue an order to show cause requiring the obligor to appear at a certain time and place for a hearing, at which time the obligor may appear to show cause why the relief requested should not be granted. A copy of the petition or motion shall be served on the obligor along with the order to show cause.

(2) Service of the order to show cause shall be by personal service, or in the manner provided in the civil rules of superior court or applicable statute.

(3) If the order to show cause served upon the obligor included a warning that an arrest warrant could be issued for failure to appear, the court may issue a bench warrant for the arrest of the obligor if the obligor fails to appear on the return date provided in the order.

(4) If the obligor contends at the hearing that he or she lacked the means to comply with the support or maintenance order, the obligor shall establish that he or she exercised due diligence in seeking employment, in conserving assets, or otherwise in rendering himself or herself able to comply with the court's order.

(5) As provided in RCW 26.18.040, the court retains continuing jurisdiction under this chapter and may use a contempt action to enforce a support or maintenance order until the obligor satisfies all duties of support, including arrearages, that accrued pursuant to the support or maintenance order.

[2008 c 6 § 1030; 1993 c 426 § 5; 1989 c 373 § 22; 1984 c 260 § 5.]

Notes:

**Part headings not law -- Severability -- 2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Severability -- 1989 c 373:** See RCW 7.21.900.

## 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, except as excluded for income in subsection (4)(i) of this section;
- (f) Contract-related benefits;
- (g) Income from second jobs, except as excluded for income in subsection (4)(i) of this section;
- (h) Dividends;
- (i) Interest;
- (j) Trust income;
- (k) Severance pay;
- (l) Annuities;
- (m) Capital gains;
- (n) Pension retirement benefits;
- (o) Workers' compensation;
- (p) Unemployment benefits;
- (q) Maintenance actually received;
- (r) Bonuses;
- (s) Social security benefits;

(t) Disability insurance benefits; and

(u) Income from self-employment, rent, royalties, contracts, proprietorship of a business, or joint ownership of a partnership or closely held corporation.

**(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 new domestic partner 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) Aged, blind, or disabled assistance benefits;

(g) Pregnant women assistance benefits;

(h) Food stamps; and

(i) Overtime or income from second jobs beyond forty hours per week averaged over a twelve-month period worked to provide for a current family's needs, to retire past relationship debts, or to retire child support debt, when the court finds the income will cease when the party has paid off his or her debts.

Receipt of income and resources from temporary assistance for needy families, supplemental security income, aged, blind, or disabled assistance benefits, 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;

(e) State industrial insurance premiums;

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

(g) Up to five thousand dollars per year in voluntary retirement contributions actually made if the contributions show a pattern of contributions during the one-year period preceding the action establishing the child support order unless there is a determination that the contributions were made for the purpose of reducing child support; 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 records of a parent's actual earnings, the court shall impute a parent's income in the following order of priority:

(a) Full-time earnings at the current rate of pay;

(b) Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data;

(c) Full-time earnings at a past rate of pay where information is incomplete or sporadic;

(d) Full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, is recently coming off public assistance, aged, blind, or disabled assistance benefits, pregnant women assistance benefits, essential needs and housing support, supplemental security income, or disability, has recently been released from incarceration, or is a high school student;

(e) Median net monthly 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.

[2011 1st sp.s. c 36 § 14; 2010 1st sp.s. c 8 § 14; 2009 c 84 § 3; 2008 c 6 § 1038; 1997 c 59 § 4; 1993 c 358 § 4; 1991 sp.s. c 28 § 5.]

Notes:

**Findings -- Intent -- 2011 1st sp.s. c 36:** See RCW 74.62.005.

**Effective date -- 2011 1st sp.s. c 36:** See note following RCW 74.62.005.

**Findings -- Intent -- Short title -- Effective date -- 2010 1st sp.s. c 8:** See notes following RCW 74.04.225.

**Effective date -- 2009 c 84:** See note following RCW 26.19.020.

**Part headings not law -- Severability -- 2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Severability -- Effective date -- Captions not law -- 1991 sp.s. c 28:** See notes following RCW 26.09.100.

## RCW 26.19.090

## Standards for postsecondary educational support awards.

(1) The child support schedule shall be advisory and not mandatory for postsecondary educational support.

(2) When considering whether to order support for postsecondary educational expenses, the court shall determine whether the child is in fact dependent and is relying upon the parents for the reasonable necessities of life. The court shall exercise its discretion when determining whether and for how long to award postsecondary educational support based upon consideration of factors that include but are not limited to the following: Age of the child; the child's needs; the expectations of the parties for their children when the parents were together; the child's prospects, desires, aptitudes, abilities or disabilities; the nature of the postsecondary education sought; and the parents' level of education, standard of living, and current and future resources. Also to be considered are the amount and type of support that the child would have been afforded if the parents had stayed together.

(3) The child must enroll in an accredited academic or vocational school, must be actively pursuing a course of study commensurate with the child's vocational goals, and must be in good academic standing as defined by the institution. The court-ordered postsecondary educational support shall be automatically suspended during the period or periods the child fails to comply with these conditions.

(4) The child shall also make available all academic records and grades to both parents as a condition of receiving postsecondary educational support. Each parent shall have full and equal access to the postsecondary education records as provided in RCW 26.09.225.

(5) The court shall not order the payment of postsecondary educational expenses beyond the child's twenty-third birthday, except for exceptional circumstances, such as mental, physical, or emotional disabilities.

(6) The court shall direct that either or both parents' payments for postsecondary educational expenses be made directly to the educational institution if feasible. If direct payments are not feasible, then the court in its discretion may order that either or both parents' payments be made directly to the child if the child does not reside with either parent. If the child resides with one of the parents the court may direct that the parent making the support transfer payments make the payments to the child or to the parent who has been receiving the support transfer payments.

[1991 sp.s. c 28 § 7; 1990 1st ex.s. c 2 § 9.]

## Notes:

**Severability -- Effective date -- Captions not law -- 1991 sp.s. c 28:** See notes following RCW 26.09.100.

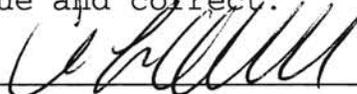
**Effective dates -- Severability -- 1990 1st ex.s. c 2:** See notes following RCW 26.09.100.

Certificate of Service by Mail

On August 20, 2013, I deposited the foregoing Respondent's Brief in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to:

John E. Nelson                      Petitioner/Appellant  
PO Box 418  
Carson, WA 98610

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

  
\_\_\_\_\_ August 21, 2013  
Connie L. Acker  
Done in Portland, Oregon

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