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

In re the Marriage of

ANNE SPRUTE f/k/a ANNE BRADLEY
Respondent

and

ERIC BRADLEY
Appellant

ON REVIEW FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

OPENING BRIEF OF APPELLANT

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TABLE OF CONTENTS

A. INTRODUCTION.....1

B. ASSIGNMENTS OF ERROR.....2

 Assignments of Error

 No. 1.....2

 No. 2.....2

 No. 3.....2

 No. 4.....2

 No. 5.....3

 No. 6.....3

 No. 7.....3

 No. 8.....3

 No. 9.....3

 Issues pertaining to Assignments of Error

 No.1.....3

 No. 2.....4

 No. 3.....4

 No. 4.....4

 No. 5.....5

 No. 6.....5

C. STATEMENT OF THE CASE.....5

D. ARGUMENT	14
I. THE COURT LOSES AUTHORITY TO ORDER POSTSECONDARY SUPPORT WHEN A PARENT FAILS TO COMMENCE MODIFICATION OF CHILD SUPPORT BEFORE CHILD SUPPORT TERMINATES FOR THE CHILD GOING TO UNIVERSITY.....	14
II. 9/11 GI BILL BENEFITS, WHEN ASSIGNED TO A CHILD OF THE PARTIES, SHALL BE CONSIDERED A GIFT AND SHOULD REDUCE THE TOTAL COST OF EDUCATIONAL SUPPORT THE PARENTS MUST PAY PRO RATA OR THE BENEFITS SHOULD BE INCLUDED AS INCOME ON THE CHILD SUPPORT WORKSHEETS.....	21
III. THE COURT ABUSED ITS DISCRETION WHEN IT REFUSED TO CAP THE TOTAL COST OF ATTENDANCE TO THE AMOUNT CHARGED BY UNIVERSITY OF WASHINGTON SEATTLE.....	28
IV. THE COURT ABUSED ITS DISCRETION WHEN IT FAILED TO COMPEL MS. SPRUTE TO ANSWER ALL INTERROGATORY QUESTIONS AND RESPOND TO ALL REQUESTS FOR PRODUCTION.....	31
V. THE COURT MUST MAKE SPECIFIC FINDINGS WHENEVER IT ORDERS A PARENT TO PAY GREATER THAN 45 PERCENT OF HIS MONTHLY NET INCOME AS AND FOR POST-SECONDARY EDUCATIONAL SUPPORT AND CHILD SUPPORT.....	37
VI. WHEN TWO CHILDEN ARE BEING SUPPORTED, BUT UNDER DIFFERENT	

BASES (MINOR SUPPORT AND POST-
SECONDARY EDUCATIONAL SUPPORT,
THE TWO CHILD COLUMN OF THE CHILD
SUPPORT SCHEDULE SHOULD BE USED TO
DETERMINE THE SUPPORT OF THE MINOR
CHILD.....40

E. CONCLUSIONS.....42

TABLE OF AUTHORITIES

Washington Cases

Alpine Lakes Prot. Soc’y v. Dep’t of Ecology 135 Wn. App. 376, 144 P. 3d 385 (2006)..... 16

Balch v. Balch, 75 Wn. App. 776, 880 P.2d 78 (1994)..... 19

Carstens v. Carstens 10 Wn. App 964, 521 P2d 241 (1974)..... 35

Childers v. Childers, 89 Wn.2d 592, 575 P.2d 201 (1978)..... 18

Cook v. King County, 9 Wn App 50, 510 P2d 659 (1973)..... 31

Davis v. Dep’t of Licensing, 137 W. 2d 537, 909 P. 2d 1303 (1996)..... 16

Fraternal Order of Eagles, Tenion Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles, 148 W. 2d 224, 59 P. 3d 655 (2002)..... 16

Flowers v. T.R.A. Indus. Inc. 127 Wn App 13, 11 P3d 1192 (2005)..... 31

In re Marriage of (Burgess) Boison, 87 Wn. App. 912, 943 P.2d 682 (1997)..... 4, 24, 25, 26

In re Marriage of Correia, 47 Wn App 421, 735 P2d 691 (1987)..... 4, 26, 27, 28

In re Marriage of Daubert, 124 Wn. App. 483, 99 P.3d 401 (2004)..... 5, 30, 40, 41

In re Marriage of Gillespie, 77 Wn. App. 342, 348, 948 P.2d 1338 (1995)..... 3, 19

<i>In re Marriage of Kelly</i> , 85 Wn App 785, 934 P2d 1219 (1997).....	30
<i>In re Marriage of Kraft</i> , 119 Wn2d 438, 38 P2d 871 (1992).....	33
<i>In re Marriage of Leslie</i> , 90 Wn, App. 796, 954 P.2d 330 (1998) Review denied, 137 W, 2d 1003, 972 P.2d 466 (1999).....	30
<i>In re Marriage of Maples</i> , 78 Wa App 696, 899 P2d 1 (1995).....	33
<i>In re Marriage of McLean</i> , 132 W.2d 301, 937 P.2d 602 (1997).....	17
<i>In re Marriage of Morris</i> , 176 Wn. App. 893, 309 P. 3d 767 (2013).....	20, 38
<i>In re Marriage of Rusch</i> , 124 Wn. App. 226, 98 P.3d 1216 (2004).....	40
<i>In re Marriage of Sagner</i> , 159 Wn. App. 741, 247 P.3d 444 (2011),.....	16, 18, 19
<i>In re Marriage of Schneider</i> , 173 W2d 353, 268 P3rd 215 (2011).....	18, 19
<i>In re Marriage of Shellenberger</i> , 80 Wn. App. 71, 906 P. 2d 968 (1995),.....	4, 25, 29, 35, 39, 40
<i>In re Marriage of Stern</i> , 57 Wn. App. 707, 789 P. 2d 807, review denied, 115 W. 2d1013 (1990).....	29
<i>In re Pollard</i> , 99 Wn App 48, 991 P2d 1201 (2000)	17, 18, 19
<i>In re Scanlon</i> , 109 Wn. App. 167, 34 P. 3d 877 (2001).....	20
<i>King v. Olympic Pipe Line</i> , 104 Wn App 338, 16 P3d 45 (2000).....	31

<i>Lambert v. Lambert</i> , 66 W.2d 508, 403 P.2d 664 (1965).....	35
<i>Miller v. Paul Revere Life Ins. Co.</i> , 81 W. 2d 302, 501 P. 2d 1063 (1972).....	17
<i>State ex rel. J.V.G. v. Van Guilder</i> , 137 Wn. App. 417, 154 P.3d 243 (2007)	31, 40, 41
<i>State v. Sponburgh</i> , 84 W2d 203, 525 P. 2d 238 (1974).....	16
<i>Streng v. Clarke</i> , 89 w. 2d 23, 569 P. 2d 60 (1977)	16
<i>Watcom County v. City of Bellingham</i> , 128 W. 2d 537, 909 P. 2d 1303 (1996).....	16
<i>Wimmer v. Wimmer</i> , 44 Wn. App. 842, 723 P.2d 531 (1986).....	19
Other Cases	
<i>Cohen v. Murphy</i> , 368 Mass. 144, 330 NE2d 473, 77 A.L.R.3d 1310 (1975).....	27
<i>In re Marriage of Tibbles</i> , 63 Or App 774, 665 P2d 1267 (1983).....	27
<i>Neville v. Blint</i> , No. 2011-CA-01613-SCT (2013) Mississippi.....	23
<i>Parker v. Parker</i> , 335 Pa Super. 348, 484 A2d 168 (1984).....	27
<i>Person v. Peterson</i> , 9 NM 744, 665 P2d 1267 (1983).....	27
<i>Wissner v. Wissner</i> , 338 US 655, 94 L. Ed 424, 70 S. Ct 398 (1950).....	27
Statutes	
RCW 26.09.170	20

RCW 26.09.175	3, 12, 14, 15, 16, 34
RCW 26.19.001	30
RCW 26.19.065	5, 38
RCW 26.19.071	4, 26, 32, 33, 34, 35, 39
Rules & Other Authorities	
Civil Rule 26	4
38 U.S.C. Section 3319(f)(3)	4, 22,

A. INTRODUCTION

Mr. Bradley and Ms. Sprute divorced when their two children were young. The divorce degree was by agreement of the parties. It included the parents paying a substantial amount of child support and specifically stated there was no postsecondary educational support.

Ms. Sprute relocated the children to the east coast. Shortly thereafter Mr. Bradley followed so he would be near the children and be able to exercise more residential time with them. Afterwards, Ms. Sprute relocated the children twice, eventually back to Washington. Mr. Bradley's relationship with the children has been hampered by the distance.

Ms. Sprute petitioned for post-secondary support but did not file worksheets until after child support terminated for the parties' oldest child. By not providing worksheets, Ms. Sprute did not commence the modification in accordance with statute. When Ms. Sprute did not commence her action before child support terminated, the court lost authority to order postsecondary educational support.

Ms. Sprute rushed the case to a hearing that should have been a temporary order hearing on her petition to modify support. The hearing was held forty-two days after Ms. Sprute filed her worksheets and provided income verification to Mr. Bradley. Mr. Bradley requested at the

first hearing that a temporary order be entered and further discovery be allowed. On revision, the trial court cut off further discovery and made the order final. The trial court also did not grant in full Mr. Bradley's motion to compel discovery, even though there was no motion for protection filed and the court did not provide reasons for not compelling all discovery requests.

The rush to judgment without discovery being completed resulted in the court ordering Mr. Bradley to pay 48.5 percent of his net income for postsecondary and child support, which amount did not allow him sufficient funds to pay his living expenses, service his debt, and continue preparing for retirement by contributing to a retirement account.

B. ASSIGNMENTS OF ERROR

Assignments of Error

1. The trial court erred when it denied Mr. Bradley's request to deny an award of postsecondary educational support.
2. The trial court erred when it denied Mr. Bradley's request to consider Ms. Sprute's GI Bill educational benefits.
3. The trial court erred when it failed to include Ms. Sprute GI Bill benefits as income to her on the child support schedule worksheets.

4. The trial court erred when it denied Mr. Bradley's request to cap the total cost of attendance at the amount charged by University of Washington Seattle.
5. The trial court erred when it denied Mr. Bradley's request to compel Ms. Sprute to answer all interrogatories and respond to all requests for production.
6. The trial court erred when it failed to impute income to Ms. Sprute.
7. The trial court erred when it ordered Mr. Bradley to pay greater than 45 percent of his monthly net income as and for postsecondary educational support and child support.
8. The trial court erred when it denied Mr. Bradley's request to use the two-child Child Support Worksheets.
9. The trial court erred when it cut off further discovery at the hearing on Ms. Sprute's motion for revision.

Issues Pertaining to Assignments of Error

1. Under RCW 26.09.175 and *In re the Marriage of Gillespie*, did the court lose authority to order postsecondary educational support when the statute unambiguously requires the filing of a petition and child support worksheets to commence a child support modification action and when her delay prejudiced Mr. Bradley's ability to prepare for a hearing scheduled by Ms. Sprute 42-days after she filed her worksheets?

2. Under *Boisen v. Burgess, Correia*, RCW 26.19.071(3) and 38 U.S.C. section 3319(f)(3), should a trial court consider a child receiving benefits under his or her parent's GI Bill when the court allocates responsibility of the total cost of attendance and the parent has freedom to choose to use or not to use his or her GI Bill to benefit child?

3. Under *In re Marriage of Shellenberger*, did the trial court abuse his discretion by not capping tuition at the University Washington Seattle rate when Mr. Bradley's postsecondary support obligation combined with his child support obligation, his debt service and his living expense, exceeded his income, when an in-state public university offered a comparable program in the child's chosen field at significantly lesser cost, and when Ms. Sprute earned income from retirement, from employment and shared expenses with her spouse who had a significant income?

4. Under Civil Rule 26 and the cases interpreting this rule, did the court abuse its discretion when it did not compel Ms. Sprute to answer all interrogatory questions and respond to all requests for production when the trial court did not give a sufficient reason for limiting discovery and did not make any findings about any threat of harm to Ms. Sprute should she be required to answer discovery and Ms. Sprute did not seek an order of protection?

5. Under RCW 26.19.065(1) is the trial court required to make findings to support ordering Mr. Bradley to pay greater than 45 percent of his net monthly income for the payment of minor child support and postsecondary educational support combined?

6. Under *In re Marriage of Daubert* should the trial court have used the “two-child” child support worksheets when the court was ordering support for the parties’ two children – one for postsecondary educational support and the other for child support?

C. STATEMENT OF THE CASE

Procedural History

The Petitioner, Anne Sprute and the Respondent, Eric Bradley finalized their dissolution of marriage without the assistance of counsel on May 16, 2003, at which time they agreed and the court ordered the parents to share responsibility of private school tuition and ordered there not be postsecondary educational support. CP 282-342. Since that time the Order of Child Support was modified December 1, 2010 (amended on March 4, 2011). On May 24, 2013, Ms. Sprute petitioned to modify child support. CP 167-177, 415-430. The matter was first heard on October 1, 2013. Upon Ms. Sprute’s motion for revision, it was again heard on October 25, 2013, in front of the trial court. The trial court revised parts of the commissioner’s order and accepted other parts.

Statement of Facts

After the court signed the decree of dissolution, Ms. Sprute and the children relocated, and then Mr. Bradley relocated. Ms. Sprute first relocated the children to Washington D.C. area. Then Mr. Bradley relocated to the same area to be closer to their children. Afterwards Ms. Sprute relocated the children to Kentucky and then to Pierce County Washington. CP 15-141.

Eric Bradley and Ms. Sprute have two children. Joshua Bradley is 19 years old and Samantha Bradley is 16 years old. Both children entered parochial schools starting with pre-kindergarten programs. Joshua graduated from Bellarmine Preparatory School in June 2013. Samantha will graduate June 2016. Joshua currently attends Colorado State University in Ft. Collins, Colorado. CP 247-261.

It was Mr. Bradley's belief during the marriage that the costs of parochial education were to be paid in lieu of college expenses. These additional private school expenses were possible because Ms. Sprute maintained a higher income than Mr. Bradley. Mr. Bradley is a college graduate and worked to pay expenses related to his college education. He has always held strong beliefs that providing an exceptional elementary educational would provide his children with the opportunity to afford their

own college educations through grants, scholarships, federally subsidized loans and working as he did. CP 15-141.

Early in 2012, at Ms. Sprute's prompting, Joshua began researching schools for the purpose of selecting one that would be able to provide him with a degree in his chosen discipline. Joshua was accepted into three schools that met these criteria: Washington State University (WSU), Colorado State University (CSU) and Oregon University (OU). Joshua and Ms. Sprute visited two of these schools: WSU in April of 2012 and CSU in December 2012. At that time neither Ms. Sprute nor Joshua had discussed any applications or school visits with the Respondent. CP 247-261. Joshua received his acceptance to CSU at the beginning of February 2013. CP 15-141.

The declaration of Ms. Sprute did not indicate that any consideration was given to a program at the University of Washington Seattle (UW) which is of similar quality to CSU. Mr. Bradley researched this information independently and presented it during the proceedings. CP 282-342. In oral arguments this was dismissed by Ms. Sprute's counsel as not being what Joshua wanted and that Mr. Bradley was not part of the selection process. CP 460-521.

In April 2013, Mr. Bradley was informed of Joshua's acceptance and plans for postsecondary education and was asked by Ms. Sprute to pay

tuition and expenses associated with this choice. Mr. Bradley offered to provide information necessary to complete the Free Application for Federal Student Aid (FAFSA) application process. Ms. Sprute informed him that Joshua would not apply for FAFSA. In May 2013 the parties were yet unable to agree as to the amount that the Mr. Bradley would pay towards Joshua's postsecondary education.

On May 22, 2013, counsel for Ms. Sprute filed a Summons and Petition for Modification of Child Support. CP 186-187, 182-185. Unknown to Mr. Bradley, she had been serving as a volunteer at an organization she began until the month prior to her filing her petition when the Board gave her a salary. Child support worksheets and income verification or financial documents were not filed at that time. Ms. Sprute did not serve Mr. Bradley. Counsel for Mr. Bradley became aware of the filing through electronic notification. On June 24, 2013, without having been served, Mr. Bradley through counsel propounded his first set of interrogatories and requests for production on Ms. Sprute.

On July 29, 2013, Ms. Sprute's partial answers and responses were returned to Respondent's counsel. Respondent's counsel in a letter dated July 31, 2013, outlined the specific interrogatories and requests for production that were deficient. CP 206-212. The majority of these deficiencies related to Ms. Sprute's income and benefits. An additional

letter was sent to Ms. Sprute's counsel confirming the agreed date of August 12, 2013, for the return of Ms. Sprute's complete responses. In this same letter counsel for Mr. Bradley informed counsel for Ms. Sprute that contrary to RCW 26.19.075 child support worksheets had not been filed by Ms. Sprute. CP 206-212.

Concurrent with the events regarding interrogatories was the premature scheduling of hearings. On July 29, 2013, Ms. Sprute scheduled a hearing for the Commissioner's calendar to be heard on August 19, 2013. CP 188-190. At that time Mr. Bradley had not been served with the Summons, Petition for Modification and worksheets required for the commencement of these proceedings.

The Respondent's counsel on August 13, 2013, filed a Motion, Objection and Declaration stating that "The petitioner's hearing is not properly before the court. Mr. Bradley has not been served. The petitioner and her attorney have not followed the statutory requirements for filing a modification of child support." CP 191-192. Ms. Sprute's counsel struck the August 19, 2013 hearing date.

Ms. Sprute on August 19, 2013, filed worksheets, financial declaration and sealed financial source documents. The worksheets listed her monthly income at \$8,315.33 and her husband, Mr. Sprute's at \$9,322.00. CP 194-198, 199-204, 1-11.

When Ms. Sprute filed her documents on August 19, 2013, she still had not fully answered the interrogatories and requests for production. Subsequently, Respondent's counsel filed a motion to compel the petitioner to answer the interrogatories fully. CP 206-212. That hearing was scheduled to be heard on August 30, 2013. CP 213.

At that time, Ms. Sprute's counsel also sent to Mr. Bradley by certified mail a copy of the Summons, Petitioner for Modification, Proposed Child Support Worksheets, Sealed Financial Documents, Financial Declaration and a Note for Commissioner's calendar with a hearing date of September 10, 2013. CP 240-241. Respondent's counsel, on August 20, 2013, signed an Acceptance of Service in Mr. Bradley's behalf. CP 205.

Respondent's counsel objected to the September 10, 2013, hearing date as Ms. Sprute had not yet provided her complete answers to interrogatories. A hearing for his motion to compel was before the court to be heard on August 30, 2013, and if Ms. Sprute fully complied at that time or shortly thereafter there would be insufficient time to review the responses and determine if any additional discovery was required. CP 214-216.

Mr. Bradley's motion to compel Ms. Sprute was granted by the court on August 30, 2013. In the order the trial court stated "petitioner

shall continue her 09/10/2013 hearing to a date after discovery is complete including time for respondent to depose petitioner.” It also stated “The Interrogatories have been substantially answered. The Mother shall provide additional bank statements and supplement her Financial Declaration and worksheets to explain extraordinary expenses. Mother shall provide dates of employment & income at Microsoft. Tax returns shall be complete including all W-2s & schedules.” CP 238-239.

Ms. Sprute provided the information and documents required from the August 30, 2013, hearing on September 4, 2013. An immediate review of these documents showed that additional discovery regarding employment discrepancies was necessary. A Motion and Order, was entered on September 5, 2013, directing Employment Security to provide employment history on Ms. Sprute. CP 242-244, 12-14.

On September 6, 2013, prior to the completion of discovery, Ms. Sprute filed a Motion for Modification of Child Support. CP 246. A Notice of Hearing was also entered with a hearing date of October 1, 2013. CP 262-263. The Declaration of Ms. Sprute and Sealed Financial Source Documents were also filed at that time. CP247-261, 15-141. Ms. Sprute’s declaration requested that Mr. Bradley be ordered to pay a monthly support payment of \$1,826.11 for the minor child and \$18,621.90 per year or 47.5 percent of Colorado State University tuition for Joshua.

The declaration also requested reimbursement of one-half of the \$14,341 that was spent on expenses related to Ms. Sprute and Joshua visiting universities and items purchased for setting up a dorm room. CP 247-261.

Mr. Bradley filed his Response to Petition for Modification of Child Support on September 25, 2013. In the response, he states that “child support for Samantha Bradley should be modified, but denies the request for postsecondary support for Joshua Bradley as the child support obligation for Joshua Bradley terminated prior to Ms. Sprute commencing her action for postsecondary support”. CP 264-265.

The matter came before Commissioner Mark Gelman on October 1, 2013. Commissioner Gelman found that “The summons and petition to modify child support were filed timely”. CP 431-433. He makes no mention whether child support worksheets had been timely filed according to RCW 26.09.175.

Commissioner Gelman made the following substantial order regarding postsecondary educational support:

(3.14)Post-Secondary Education may be reviewed annually. The parties shall contribute to the children’s postsecondary educational support. The father shall continue making this monthly payment to Joshua as long as Joshua attends college and complies with RCW 26.19.090. Joshua has been admitted to college at Colorado State University in Ft. Collins, Colorado. The Father shall pay 46 percent and the Mother 54 percent of Joshua’s Tuition & Room and Board up to the amount annually paid at UW

Seattle. Joshua to pay any remaining amounts.** **If Joshua qualifies for any scholarship/financial aid that reduces annual expenses below UW Seattle – parties shall pay pro rata the balance. Father may pay CSU or Joshua directly. Father shall receive credit for amounts paid to Joshua since July 1, 2013. Father may spread payments over 9 months. If mother utilizes her GI benefits toward Joshua's college expenses, it is to be credited to the total cost and then both parents shall share pro rata the remainder of the cost. Mother to provide full disclosure on GI Bill and it may be reviewed annually.
(3.23)Both parents shall apply for FAFSA yearly.
(*)This order may be adjusted upon further financial discovery by either party. CP 460-521 CP 415-430.

On October 10, 2013, Ms. Sprute filed a Motion for Revision of Court Commissioner Ruling. The revision put forth Ms. Sprute's issues as follows: unreimbursed expenses, attorney fees, the Respondent's payment schedule for tuition, allocation of GI Benefits, the tuition cap, the sharing of tax exemptions and the permission for additional discovery. CP 437-439.

The Motion for Revision was held on October 25, 2013, in front of the Honorable Judge James Orlando. Judge Orlando granted in part the motion and ordered the following revisions:

- 1.) Paragraph 3.14 & 3.17 of the Order of Child Support entered Oct 1, 2013 is revised. If the Mother utilizes her GI benefits towards Joshua's college expenses they shall apply to her share only. Father shall not share in this benefit of mother. Father shall pay his pro rata share.
- 2.) ¶ 3.14 shall require both parents to pay their prorated share up to the annual expenses at Colorado State U. of

approx. \$39,200 annually. The UW-Seattle Cap is eliminated.

3.) The exemptions shall be divided each year as long as the father is current with all support obligations each year on Dec 31. When only one exemption remains; alternated.

4.) No Attorneys fees awarded

5.) Mother not reimbursed by father for visiting college campuses earlier this year.

All other provisions of the Oct 1, 2013 orders are affirmed; Parties to exchange 2013 tax returns by 4-30-14; No further discovery is ordered. CP 528-529. Transcript of Proceeding filed.

It is from this order of Judge Orlando and the order of

Commissioner Gelman on October 1, 2013, that Eric Bradley bases his appeal. Notice of Appeal was filed November 20, 2013. CP 530-533

D. ARGUMENT

I. THE COURT LOSES AUTHORITY TO ORDER POSTSECONDARY SUPPORT WHEN A PARENT FAILS TO COMMENCE MODIFICATION OF CHILD SUPPORT BEFORE CHILD SUPPORT TERMINATES FOR THE CHILD GOING TO UNIVERSITY.

Eric Bradley, the Appellant herein, argues the trial court erred as a matter of law when it denied Mr. Bradley's request to dismiss Ms. Sprute's request for postsecondary educational support because Ms. Sprute's failure to follow RCW 26.09.175 until after child support terminated for the child going to university. Not only was Ms. Sprute's commencement of the action procedurally flawed, her failure prejudiced Mr. Bradley's ability to prepare for the trial by affidavit hearing. This

error continued when the trial judge ratified, over objection of counsel for Mr. Bradley, the court commissioner's ruling that the summons and petition for modification were timely filed.

Generally this court reviews superior court's rulings, not the commissioner's. But when the superior court upon revision adopts the commissioner's findings, conclusions, and rulings as its own, the court of appeals reviews the commissioner's rulings.

To seek a modification of a dissolution decree in regards to child support, one must file a petition for modification and worksheets. RCW 26.09.175. This appeal then is somewhat unique as it may be the first case to ask the question, what constitutes "perfecting" a modification filing for an order of child support? Does it require merely the filing of a petition for modification or does it require the filing of worksheets as well? And what is required to make this filing timely?

The original moving party, Ms. Sprute, filed a petition to modify child support and additionally sought postsecondary educational support under the reserved language of the most recent child support order. This last child support order reserved the right for either party to ask for postsecondary educational support for the children if a petition for modification was filed prior to either child turning 18 or graduating from high school, whichever occurred later. However, to perfect the filing for

such modification, Mr. Bradley argues that RCW 26.09.175 requires that a petition and worksheets must be filed. She filed the petition on May 24, 2013. She filed worksheets on August 19, 2013. The verification of those worksheets became an issue of discovery which is also part of this appeal.

Our courts have said about statutory interpretation: “When interpreting a statute, our primary objective is to ascertain and carry out the legislature’s intent. *Alpine Lakes Prot. Soc’y v. Dep’t of Ecology*, 135 WnApp 376, 390, 144 P3d 385 (2006). We first look to the plain meaning of the statute. If the statute is unambiguous, we derive legislative intent from the language alone.” *Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 W2d 224,242-43, 59 P3d 655 (2002).

We also must give effect to all of the statutory language so that “no portion [is] rendered meaningless or superfluous.” *Davis v. Dep’t of Licensing*, 137 W2d 957, 963, 977 P2d 554 (1999) (quoting *Watcom County v. City of Bellingham*, 128 W2d 537, 546, 909 P2d 1303 (1996)). *In re Marriage of Sagner*, 159 Wn App 741, 749, 247 P3d 444, (2011)

Our court has further stated in *Streng v. Clarke*, 89 W2d 23, 569 P2d 60 (1977) the following: “Moreover, legislative intent is to be ascertained from the statutory text as a whole, interpreted in terms of the general object and purpose of the legislation. *State v. Sponburgh*, 84

Wn.2d 203, 210, 525 P2d 238 (1974).” Further, a statute is to be construed with reference to its manifest object. If the language is susceptible of two constructions, one which will carry out and the other defeat that object, it should receive the former construction. *Miller v. Paul RevereLife Ins. Co.* 81 W2d 302, 310, 501 P2d 1063 (1972).

Why is it so important that a moving party be required, when petitioning to modify child support, to file worksheets to timely perfect such filing? If there is jurisdiction, then the filing and service constitutes notice of what is sought to the non-moving party. *In re Marriage of McLean*, 132 W2d 301, 937 P2d 602 (1997). The notice required and applied in *McLean* was particularly important as the non-moving party was a nonresident at the time of the modification being started. Like the non-moving party in *McLean*, Mr. Bradley was a non-resident at the time this case was started.

Our court had this worksheet issue before it once in the context of a modification of support in *In re Marriage of Pollard*, 99 Wn. App. 48, 991 P2d 1201 (2000). In that case the individual seeking modification filed her petition to modify over a year prior to the modification hearing. This individual did not file her worksheets until two months prior to the hearing. When the parent who received child support party complained about the effective date of the modified child support, the *Pollard* court in

dicta stated “We find no statutory mandate that all required documents must be attached before a motion for modification is deemed filed.” *Pollard* at 55. The *Pollard* court did not set forth any reasons for statutory interpretation. It did not analyze legislative intent. It did not state whether the statutory language was ambiguous or unambiguous. This dicta does not appear to constitute a holding as to the issue whether a petition and worksheets must be filed to commence a petition to modify child support.

Since *Pollard* our courts have made several procedural decisions which differ with the *Pollard* statement. *Marriage of Sagner*, supra. *In re Marriage of Schneider*, 173 Wn. 2d 353, 268 P.3d 215 (2013).

The superior court has broad subject matter jurisdiction, which “refers to the court’s authority to entertain a type of controversy...” *Marriage of Schneider*, supra at 360. However the legislature may limit the court’s authority, as it does with respect to issues of interstate family support, at issue in *Schneider. Marriage of Schneider*, supra at 360-361.

Mr. Bradley does not challenge whether the trial court has jurisdiction. The court has continuing jurisdiction for modification of child support orders, which include extending support to adult children who are still dependent. *Childers v. Childers*, 89 W2d 592, 575 P2d 201 (1978). But the question he poses is whether the court had the authority to act if the statutory requirements were not met?

A court that grants relief beyond the scope of its authority commits error of law but does not exceed its subject matter jurisdiction *Marriage of Schneider*, supra at pg 362. The *Marriage of Sagner* (at page 750, and fn 6) case suggests that the *Marriage of Pollard* dicta is wrong. *Marriage of Pollard* failed to recognize the notice requirement of timely filing worksheets as a required part of a modification action.

Ms. Sprute filed a petition to modify on May 24, 2013. She filed worksheets with other financial documents on August 19, 2013, which was after child support had terminated for Joshua.

“A court may modify the order [for postsecondary educational support] if a party files the petition to modify before support terminates.” *Marriage of Sagner*, supra, citing authorities *Wimmer v. Wimmer*, 44 Wn App 842, 844, 723 P2d 531 (1986); *Balch v. Balch*, 75 Wn App 776, 779, 880 P2d 78 (1994); *In re Marriage of Gillespie*, 77 Wn. App. 342, 348, 948 P.2d 1338 (1995). Mr. Bradley argues that the trial court lacked authority when Ms. Sprute failed to commence her petition before child support terminated for Joshua. To commence the modification, or to give the statutorily required notice to Mr. Bradley, she was required to file a petition and worksheets. He contends there was not a timely perfected filing that precludes this court from ordering postsecondary educational support because this court is without authority to do so.

Ms. Sprute responded to this argument by presenting the case *In re Marriage of Morris*, 176 Wn App 893, 309 P.3d 767 (2013), suggesting that her failure to meet the perfecting requirements of filing for modification did not mean the court lacked the authority to act. In *Morris* the moving party used the wrong form [Motion to Adjust Support instead of Petition to Modify Support] for her request to have postsecondary educational support ordered. However, the moving party timely filed worksheets. Division One for the Courts of Appeal found the moving party's actions were procedurally and substantively equivalent to a modification proceeding. In fact a similar result was mentioned in *In re Scanlon*, 109 Wn App 167, 34 P3d 877 (2001) where Division One stated: "RCW 26.09.170(1) envelopes an adjustment action within the purview of a modification, making an adjustment a form of modification." pg. 172-173. Therefore, there was no limit on the authority for the court to act in *Marriage of Morris*, supra.

Marriage of Morris, supra, is inapposite to the instant case. There was no procedural error in *Marriage of Morris* like there was in this case. Mr. Bradley had no notice, without worksheets filed and served, to know what was being sought.

The court lacked the authority to act as Ms. Sprute procedurally failed to provide the crucial information to Mr. Bradley which would have

put him on notice as to what she claimed her income and deductions would be, what his income and his deductions would be, what the cost of educational expenses would be if any, what the cost of healthcare insurance would be if any - with this information, Mr. Bradley would have been better able to frame his first discovery requests. Instead, he was allowed only one set of discovery requests which led him to realize Ms. Sprute's income was entirely different than it has been at time of the prior modification.

2. 9/11 GI BILL BENEFITS, WHEN ASSIGNED TO A CHILD OF THE PARTIES, SHALL BE CONSIDERED A GIFT AND SHOULD REDUCE THE TOTAL COST OF EDUCATIONAL SUPPORT THE PARENTS MUST PAY PRO RATA OR THE BENEFITS SHOULD BE INCLUDED AS INCOME ON THE CHILD SUPPORT WORKSHEETS.

Our state courts have not addressed the issue of how to treat 9/11 GI bill benefits vis-à-vis allocating postsecondary educational support between parents and child. Assuming the parties have the obligation of postsecondary educational support for Joshua, the court must decide how the 9/11 GI bill benefits, if actually given to Joshua affects this situation.

Ms. Bradley accrued an educational benefit by serving in the military post 9/11. This new benefit looks much like the benefits accrued to military personal post World War II but there is one major difference. Many personal accruing these benefits do not need additional education.

The Federal Law allows for military personal to give away the use of this benefit to immediate family members for up to 36 months of paid expense. Apparently Ms. Bradley has given some of this benefit to her son in an undisclosed amount.

She argues that the 38 U.S.C. section 3319(f)(3) precludes this benefit being used as a credit against what the parents together owe for postsecondary educational support before determining how much more each parent must pay, although she contends it can be used for her share of whatever support she owes. Basically, she reads the federal statute as saying any such credit against the cost of education would effectively act as a division of the benefits.

Commissioner Gelman ordered the parents would pay their share of postsecondary educational benefits remaining after Ms. Sprute used her benefits, if she chose to use them. His order did not confiscate Ms. Sprute's property. His order did not direct her to use the benefit in a certain way. His order allowed her to use the benefit as she chose. The order stated that if she chose to use the benefits, because such use would reduce the cost of postsecondary educational expense for Joshua, the parents would pay their share of what remained. His order did not impermissibly divide Ms. Sprute's property.

Mr. Bradley admits the statute language states this benefit can never be divided as property in any dissolution action. But is the consideration of the use of GI Bill Benefits when determining postsecondary educational support an impermissible distribution of her property right?

Ms. Sprute argues a Mississippi decision should be adopted by this state as authoritative. [*Neville v. Blintz*, No. 2011-CA-01613-SCT]. In that case the father was a former military member who had earned 9/11 GI Bill benefits. He petitioned for an order requiring the mother to contribute to postsecondary educational expenses and argues that his GI Bill benefits should not be considered when determining parents' responsibilities – that the benefits would not be used in any way to lower the amount the mother paid for postsecondary educational expenses. The *Neville* court found that benefits were not marital property and thus under the federal statute not subject to division. It stated that the court chancellor's decision to take the benefits off the top of the college expenses gave the mother a credit and that doing so effectively divided the benefits. *Neville* held that the court chancellor's order was prohibited by 38 U.S.C. 3319(f)(3).

In this case our court commissioner had ruled the benefit, if used, was to reduce the total amount of the child's postsecondary educational

expense. Then the remainder owed was to be split according to the parties' proportionate shares.

In Washington we have the case of *Boisen v. Burgess*, 87 Wn App 912, 943 P2d 682 (1997). Mr. Burgess and Ms. Boisen had two children. They divorced in 1975 and the decree required Mr. Burgess to pay one-half of the room, board, tuition, and other necessary expenses for a four year education of each child. When the former Mrs. Burgess had married Mr. Boisen, the step-father assumed many of the duties of a father to the two children. This included his providing for the full payment in the amount of \$211,796 of all college expenses for both Burgess children.

After the children were educated Ms. Boisen sought reimbursement from Mr. Burgess for his one-half obligation after they had graduated. But our court did not award reimbursement to her. Our court stated:

“A necessary corollary was that third-party payments covering all (100 percent) of the children's college expenses would be credited one half to Mr. Burgess, and one-half to whoever was obligated to pay the remainder of the college expenses. The trial court so held when it ruled (1) that Mr. Burgess owed one-half of the children's college (\$105,898) pursuant to the 1974 separation agreement; that he was entitled to a credit equal to one half of Dr. Boisen's third party contributions (\$105,898); and thus, that Mr. Burgess had satisfied his obligation to pay college expenses.”

Boisen at 921.

The effect of a third party payment then is more of a gift than a property award. Dr. Boisen paid the educational cost, which ended up being a gift to the children, and wiping out the obligation the father had to pay for his ordered amount. Ms. Boisen was trying to characterize it as an award of property interest received from Dr. Boisen that had to be repaid. And our court rejected her argument.

Mr. Bradley believes this court should follow the reasoning of *Boisen*. If Ms. Sprute wishes to give her son a gift of her benefit, which she has a right to do, then it becomes either a payment from a third party (federal government) or the son's contribution to his own education. In the postsecondary educational support of the final order signed by the trial court, Joshua is not required to pay any of the college expenses.

Our court has recognized at times the court should consider the adult children's ability to contribute to their own education through grants, scholarships, student loans and summer and/or part time employment during the school terms. *In re Marriage of Shellenberger*, 80 Wa App 71, 85, 906 P2d 968 (1995), at page 84. Ms. Sprute wants to shoulder most of the cost of this child's education on Mr. Bradley, with her paying most, if not all, of her share with a benefit she claims is hers to use as she wishes. However, once she designates the benefit, is it still hers? Mr. Bradley

argues it should be considered, once designated, a gift from the federal government as Dr. Boisen provided a gift to the Burgess children, or the son's contribution to his own education.

To the degree the child uses his gift from his mother's benefit to pay for his educational expenses, the remainder should then be paid as postsecondary educational support between the two parents. Of course, the percentage split between the parents will be determined on how this court rules on other issues on appeal herein. But assuming the trial court had the authority to act on the flawed procedural filing for postsecondary educational support, these issues should be decided using the same reasoning as the court in *Boisen*.

Even if Mr. Bradley's argument characterizing the GI Bill benefit as a gift to the son - or the son's contribution - fails, this court may and should consider Ms. Sprute's use of the GI Bill benefits when ordering postsecondary support. It may do so by characterizing the benefits as income to Ms. Sprute on the child support worksheets pursuant to RCW 26.19.071(3).

"Child support obligations are markedly different from ordinary indebtedness." *In re Marriage of Correia*, 47 Wn App 421, 424, 735 P2d 691 (1987).

“*Wissner v. Wissner*, 338 US 655, 94 L. Ed 424, 70 S. Ct 398 (1950), *Cohen v. Murphy*, 368 Mass. 144, 330 NE2d 473, 77 A.L.R.3d 1310 (1975); *Person v. Peterson*, 9 NM 744, 665 P2d 1267 (1983); *In re Marriage of Tibbles*, 63 Or App 774, 665 P2d 1267 (1983), and *Parker v. Parker*, 335 Pa Super. 348, 484 A2d 168 (1984) all basically hold that a spouse’s military disability payments may be considered in setting spousal or child support.” Id.

In *Correia* the obligor parent argued that under 38 U.S.C section 3101(a) and section 770(g), the trial court’s inclusion of his VA disability income was error as this income was federal protected and thus exempt.

38 U.S.C section 3101(a) provides in part:

Payments of benefits due or to become due under any law administered by the Veterans' Administration shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either Before or after receipt by the beneficiary.

Correia continued by stating: “Generally, federal law is limited in its application to domestic relations; the United States Supreme Court favors state court retention of exclusive control over the collection of child support and state family and family property law must do "major damage"

to "clear and substantial" federal interests before the supremacy clause will override or preempt the state law." *Id.* On page 425 *Correia* ruled "Here, prohibited by 38 U.S.C. § 3101(a), the court did not garnish, assign, alienate or do anything else to Mr. Correia's VA disability compensation. The court merely considered Mr. Correia's entire income which included his disability benefits before ordering him to pay as a child support obligation one-third of his entire income. The court did not err."

Similarly, this court should consider Ms. Sprute's giving her GI Bill benefits to her son as either a gift to be credited off the top, or as the son's contribution, or as a source of income from her to be included in the child support worksheets.

3. THE COURT ABUSED ITS DISCRETION WHEN IT REFUSED TO CAP THE TOTAL COST OF ATTENDANCE TO THE AMOUNT CHARGED BY UNIVERSITY OF WASHINGTON SEATTLE.

Mr. Bradley also appeals the ruling of the superior court which revised the commissioner's ruling that capped postsecondary educational support at the University of Washington level.

The record reflects that Ms. Sprute and the son found three programs they thought would meet the needs of the child: Washington State University, Oregon University and Colorado State University. Mr. Bradley found a fourth program: University of Washington Seattle. The

most expensive, Colorado State University, was chosen without any agreement or input from Mr. Bradley.

The record reflects that Ms. Sprute's income includes three sources: retirement, current employment, and at her choice GI Bill benefits. The record further shows on the child support worksheets that Ms. Sprute's spouse earns \$9,322 per month. The record further shows Ms. Sprute's GI Bill benefits would pay most, if not all, of her share of postsecondary educational expenses. Thus, Ms. Sprute does not have much of an incentive, if any, to keep the cost of college expenses down. She may feel free to spend whatever her child wants and without regard to whether Mr. Bradley can afford to pay his living expenses, service his debt, and prepare for his retirement.

Further, it appears it was never considered the child could live at home and take junior college courses to complete undergraduate requirements that would be transferable to keep education costs in check. *In re Marriage of Shellenberger*, 80 Wa App 71, 85, 906 P2d 968 (1995).

Mr. Bradley relies on *Marriage of Schellenberger*, supra, and *In re Marriage of Stern*, 57 Wn App 707, 720, 789 P2d 807, review denied, 115 W2d 1013 (1990), which held that postsecondary educational support should be based on the cost of a public school, not a private or out of state school with out of state tuition. This could be accommodated by capping

the amount owed by percentage to the public school having a program that would meet the child's needs. That would be the cost of attending the University of Washington Seattle (UW). Given the financial circumstances of the parties' households, it was an abuse of the trial court's discretion to order Mr. Bradley to pay his proportionate share of Joshua's attendance at the most expensive institution. It does not matter that the parents had a history of paying private school tuition because Ms. Sprute has not shown that she or Joshua's choice to attend CSU was reasonable and necessary when a state funded university was available and offers the program Joshua wants to pursue and at a significantly lower cost. It is not fair. It ignores the plight of Mr. Bradley. He is trapped by an oppressive order that he would not have voluntarily followed had he remained married to Ms. Sprute while Joshua enrolled in university.

The trial court must consider whether the additional amount to be paid is "commensurate with the parents' income, resources and standard of living" in light of the totality of the financial circumstances. See RCW 26.19.001; *In re Marriage of Daubert*, 124 Wn App 483, 99 P3d 401 (2004) citing *Leslie* 90 Wn App 796, 804, 954 P2d 330 (1998), review denied, 137 W2d 1003, 972 P2d 466 (1999). The court is to make specific findings that the ruling is something the Appellant father can pay. *In re Marriage of Kelly* 85 Wn App 785, 934 P2d 1218 (1997). Findings were

not made; nor was the total financial picture examined. *State ex rel. J.V.G. v. Van Guilder*, 137 Wn. App. 417, 154 P.3d 243 (2007).

4. THE COURT ABUSED ITS DISCRETION WHEN IT FAILED TO COMPEL MS. SPRUTE TO ANSWER ALL INTERROGATORY QUESTIONS AND RESPOND TO ALL REQUESTS FOR PRODUCTION.

Mr. Bradley argues the court abused its discretion in cutting off discovery and declaring its ruling as a final order. Discovery was initiated to clarify the petition and expected financial documents. “Whether a court abuses its discretion in controlling discovery depends on the interests affected and the reasons for and against the decision.” *King v. Olympic Pipe Line*, 104 Wn App 338, 348, 16 P3d 45 (2000). A court abuses its discretion when it exercises that discretion in a way that is “manifestly unreasonable, or ... on untenable grounds, or for untenable reasons.” *Flowers v. T.R.A. Indus. Inc.* 127 Wn App 13, 38, 11 P3d 1192 (2005). The *Flowers* court held that the discovery rules “recognize and implement the right of access,” and “grant a broad right of discovery which is subject to the relatively narrow restrictions of CR26”. *Flowers* at 38. “CR 26(b) (1) authorizes discovery of any matter, not privileged, which may be admissible in evidence or which “appears reasonably calculated to lead to the discovery of admissible evidence”. *Cook v. King County*, 9 Wn App 50, 51, 510 P2d 659 (1973).

At the hearing on motion to compel answers to discovery, the trial court did not provide sufficient reasons for limiting discovery. No “good cause” was shown that any harms listed in the rule were threatened and can be avoided without impeding the discovery process.

There was the question of whether the Responding mother was underemployed. On August 19, 2013, Ms. Sprute filed under seal her one and only one pay stub, which covered the period April 1, 2013 through June 30, 2013. Very little else was known about Ms. Sprute’s new job. The pay stub does not show how many hours she works. The record shows she worked as a volunteer for over a year. It is a reasonable concern of Mr. Bradley that Ms. Sprute was not working full time.

There was the question about Ms. Sprute’s retirement pay. Despite a discovery request and RCW 26.19.071(2) requiring a parent to file a copy of a current paystub, Ms. Sprute maintained that her military retirement pay did not include any pay stubs and therefore she would not produce any. Instead, the record shows the court relied upon Ms. Sprute’s bank statements to calculate the amount of her net retirement pay. Mr. Bradley has a right to know whether allotments or other deductions were being removed from Ms. Sprute’s gross retirement pay. This is the reason the statute requires she provide him a copy of her retirement pay stub. It

simply is not believable that the federal government would pay her every month without any pay stubs.

There was a question about how much GI Bill benefits Ms. Sprute would use. Had discovery been provided, Mr. Bradley would have argued those GI Bill benefits should be considered. For instance, he could have argued that the benefits are income to Ms. Sprute that should have been included as in the child support worksheets. If this court rejects Mr. Bradley's argument that Ms. Sprute's use of GI Bill benefits should be considered, then when she activates it, does it not then become an "income" resource to her? The definition of income is extremely broad and includes all income except that which is specifically excluded by statute. RCW 26.19.071(3). The Respondent mother was totally unwilling to give any information on this benefit. Other related benefits and federal government benefits are resources which have to be disclosed and used. RCW 26.19.071 (1) [contract-related benefits]; [social security benefits]; *In re Marriage of Kraft* 119 W2d 438, 451, 832 P2d 871 (1992), [VA benefits]; *In re Marriage of Maples*, 78 Wa App 696, 899 P2d 1 (1995) [disability payments].

Mr. Bradley executed discovery to clarify the petition prior to getting Ms. Sprute's worksheets and prior to receiving her income verification. To these requests for discovery he was at first ignored, then

provided some of the information he needed, and finally forced to seek an order to compel answers and responses to discovery.

Ms. Sprute obtained civilian work that consistently earned her more income than she reported on her worksheets. Under RCW 26.19.071(6)(b) Mr. Bradley sought to impute income to Ms. Sprute's historical rate of pay at Microsoft, a job she quit for her own reasons. She stated in a declaration that the job environment in that civilian work was not conducive to her, so approximately eighteen months before this modification filing she started a non-profit company where she took no income for more than a year. Mr. Bradley was hampered in arguing his theory of the case that Ms. Sprute was underemployed because the trial court did not compel the discovery he sought and cut off further discovery when the case was heard on October 1, 2013, only 42-days after Ms. Sprute filed her worksheets as required by RCW 26.09.175. This rush to judgment prejudiced Mr. Bradley's due process right to be heard and to have access to the information, documents and facts relevant to the legal matter at hand.

At about the same time she was filing for this modification, Ms. Sprute stated the board of directors of the company that she began awarded her a salary that was less than 60 percent of what she had been earning historically. Obviously her change in income changes the

percentage split between the parties for any assessment of support or assessment for postsecondary educational support. What is not known, because further discovery was prevented, was how long this new pay would last or would it increase. As stated earlier, it was not known how many hours Ms. Sprute worked per week. Mr. Bradley wanted to do a second set of discovery followed by a deposition of Ms. Sprute if such was deemed appropriate.

Our Appeals Courts have consistently ruled:

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 unemployed or voluntarily underemployed based upon that parent's work history, education, health, and age, or any other relevant factors. In the absence of any 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... RCW 26.19.071(6) (emphasis added); see also *Lambert v. Lambert*, 66 W2d at 508-510, 403 P2d 664 (1965), (where optometrist abandoned job to maintain ailing solo practice, held reduction in income was "self-induced"); *Carstens v. Carstens*, 10 WaApp 964, 967-68, 521 P2d 241 (1974) (modification reversed where respondent's changed financial circumstances resulted from his "decision" to support his alcoholism from his existing assets and not to pursue employment as an accountant, though qualified to do so.)

Marriage of Shellenberger, supra at page 81

If the sought for discovery had produced more evidence from which Mr. Bradley could argue that the mother was voluntarily

underemployed, the trial court's ruling ended that possibility. He would have then been able to more persuasively argue Ms. Sprute's income should be imputed to her historical rate of pay. This imputed income, when combined with the mother's military income would affect the parties' proportionate share.

In this case the commissioner stated he felt he had sufficient information to render a decision, based on the worksheets. However, he specifically ruled that the order entered was temporary and could be revisited if the continuing discovery Mr. Bradley was seeking produced evidence that the court would consider for a modification to his ruling. In fact his references to supporting Mr. Bradley's discovery requests were admirable.

In revision the superior court judge cut off further discovery and made the support ruling a final order. Mr. Bradley argued there had been a rush to judgment. Ms. Sprute had scheduled two hearings, one prior to filing worksheets and one on the same day as she filed her worksheets, both hearings having then been cancelled prior to scheduling the third hearing in front of the commissioner. From the date Mr. Bradley had the worksheet information, he had only 42 days to prepare to respond to what was being sought.

Mr. Bradley believes the actions of Ms. Sprute in not timely filing worksheets and not answering discovery were intentional and calculated to prevent Ms. Bradley from being able to argue his theory of the case – that Ms. Sprute was voluntarily underemployed. And if she is, her rush to judgment was meant to shoulder him with a higher contribution to the support for the minor child as well as postsecondary educational support than he should have been obligated to pay. He asks this court to find the trial court abused its discretion when it did not order Ms. Sprute to answer all interrogatory questions and to respond to all requests for productions. He further argues the trial court abused its discretion when it cut off further discovery when such little information about Ms. Sprute’s income and new employment were known. He seeks on remand for the right to conduct the discovery he needs to do in order to adequately respond to the petition to modify. Mr. Bradley further asks this court to find the superior court acted beyond its discretion in making this order final.

**5. THE COURT MUST MAKE SPECIFIC FINDINGS
WHENEVER IT ORDERS A PARENT TO PAY
GREATER THAN 45 PERCENT OF HIS MONTHLY
NET INCOME AS AND FOR POSTSECONDARY
EDUCATIONAL SUPPORT AND CHILD SUPPORT.**

Interestingly when examining child support payments, our statute makes it so that an upper limit for child support is 45 percent of an

obligor's net income. RCW 26.19.065. *In re Marriage of Morris*, 176 Wn. App. 893, 909. Mr. Bradley contends the amounts ordered for him to pay for the minor child support and for the postsecondary educational support requires him to pay 48.5 percent.

Mr. Bradley's monthly net income is \$6,193.71. CP 417. Mr. Bradley's monthly personal expenses are \$3,450.29. CP 426. Mr. Bradley claimed monthly expenses of \$3,755. CP 393. By incorporating the Child Support Schedule Worksheet into the Findings and Conclusion, Commissioner Gelman effectively adopted the \$3,450.29 figure as a finding of fact. CP 432. Mr. Bradley's monthly surplus of net income over expenses is \$2,743.42 (calculated from the previous two figures). Mr. Bradley's monthly child support and postsecondary support obligations under Judge Orlando's Order of Revision is \$3,003 if the CSU obligation is spread over 12 months. Judge Orlando effectively ordered Mr. Bradley to pay 46 percent of CSU's \$39,200 charge for tuition, room, and board. CP 533 and CP 420. Forty-six percent of \$39,200 is \$18,032. Eighteen thousand, thirty-two dollars (\$18,032) divided by twelve equals \$1,502. One must add to them the \$1,501.44 figure for Samantha. CP 418. Thus, Mr. Bradley's required total monthly support amount is \$3,003. By the court's own figures, Mr. Bradley's monthly required child support and post secondary support obligations

exceed his available net income (income net of taxes and personal expenses) by \$259.58. In percentage terms, Mr. Bradley's child support and post secondary support obligations are 48.5 percent ($\$3,003 / \$6,193 = .485$) of his monthly net income.

Any court ruling that “would force the obligor into bankruptcy, or force that parent to liquidate the family home because he or she cannot make both the support payment and the mortgage payment will, in most cases we presently envision, amount to a patent abuse of discretion.” *Marriage of Shellenberger*, supra at 84. While these rulings most likely are not going to drive Mr. Bradley into bankruptcy, they will force him either to borrow money or withdraw funds from his retirement account. Our law provides protection to parent’s contributions to retirement accounts. RCW 26.19.071(5)(g). When as in this case a parent does not have a home, arguably because his child support debt to income ratio would not allow the purchase of a home, but instead of owning a home he contributes to a retirement account, the court order should not force him to liquidate part of his retirement account to pay for his child to attend an out-of-state university when a public university at significantly lower cost is available and offers the program the child is pursuing. These are the most probable consequences of the court’s awarding support in excess of 45 percent of his net income.

Mr. Bradley reported he lives in a very expensive area of the country. He recognizes he will also have two children in college at some point when he will have to go into deeper debt if the circumstances of the younger child are the same as the older child. He understands he cannot treat either child differently, just because of birth order. *Van Guilder*, supra, at pg 425.

It was noted Mr. Bradley had budgeted to pay child support. He did not list it on his financial declaration as an expense. The court found variously he had between \$2,500 to \$3,000 monthly he could pay for the support of his children. The court made no findings that based on his financial circumstance he could pay in excess of that for the combined minor support and his share of the postsecondary educational support. Failure to make such findings is grounds for a remand for the trial court to make such findings. *Marriage of Shellenberger*, supra. Those findings are to examine the needs of the child(ren). "If children do not have a need for child support exceeding the statutory maximum, the court cannot award" it. *Marriage of Daubert*, supra at pg 496 citing *In re Marriage of Rusch*, 124 Wn App 226, 98 P3d 1216 (2004)

6. WHEN TWO CHILDEN ARE BEING SUPPORTED, BUT UNDER DIFFERENT BASES (MINOR SUPPORT AND POSTSECONDARY EDUCATIONAL SUPPORT,) THE TWO CHILD COLUMN OF THE CHILD SUPPORT

**SCHEDULE SHOULD BE USED TO DETERMINE THE
SUPPORT OF THE MINOR CHILD.**

The trial court adopted the worksheets presented to the court commissioner which were based on a “one child” column support determination. Mr. Bradley appeals and argued to the trial court and commissioner the worksheets should reflect the determination of the minor child support on a “two child” column basis, even though the older child was now attending college, and any support would come in the form of postsecondary educational support.

Courts must consider the total circumstances of both households without giving priority to certain children based on birth order. *Van Guilder*, supra, at pg 425. By using the “one child” support column calculation for the one minor child, the comparative figure based on the parental pro rata incomes is higher than it would be for one child using a “two child” support column figure. It is only fair that Mr. Bradley should pay only what he owes to the minor child, if he is still obligated to pay for the support of the older child, although on a different basis.

Using worksheets to calculate the minor support, as though he was only supporting one child, is patently not the facts, unless he owes less than he is currently ordered to pay for his share of the postsecondary educational support. This issue was noted in *Marriage of Daubert*, supra,

at pg 503, but the court noted the one child worksheet was not appealed so the court did not have the issue before it. Here, the court now has it before it.

E. CONCLUSION

For the foregoing reasons, the court's orders regarding child support should be overruled as follows:

1. Because Ms. Sprute did not commence her modification of support before child support terminated for Joshua, her request for postsecondary educational support should be denied.
2. Ms. Sprute's use at her option of 9/11 GI Bill benefits to gift Joshua should be subtracted off the top of the total postsecondary educational expense, as Joshua's contribution, and the parents should pay the remainder in their proportionate shares.
3. In the alternative, Ms. Sprute's decision to use the benefits should be considered income and that amount added to her child support worksheets.
4. Because a public university was available and offered the program that Joshua was seeking, the total cost of attendance should be capped at the rate set by the public university.
5. The child support worksheets should be changed to reflect that Ms. Sprute's income from present employment should be based upon

her historical rate of pay at Microsoft and be added to her income from retirement and use of her GI Bill benefits.

6. The worksheets should be changed to use the “two-child” schedule instead of the “one-child” schedule because Mr. Bradley is supporting two children and the court should not favor one child over another.

For the foregoing reasons, the court’s orders regarding child support should be remanded for the following reasons:

1. To the extent Mr. Bradley is ordered to pay greater than 45 percent of his net income, the case should be remanded to the superior court to lower the amount of support he pays or to give the superior court the opportunity to provide findings that are required by case law.
2. The child support order should be a temporary order.
3. Ms. Sprute should be compelled to answer all questions and provide all responses to Mr. Bradley’s first set of discovery requests.

4. The discovery should be continuing and not cut off.

Respectfully submitted this 8th day of April, 2014


C. David Lutz WSBA# 26728
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that on the 8th day of April, 2014, I caused a true and correct copy of this Opening Brief of Appellant to be served on the following in the manner indicated below:

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