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

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**In Re the Marriage of:**

Brian Paul Roderick,

Appellant,

v.

Christina Marie Roderick,

Respondent.

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Pierce County Superior Court

Cause Nos. 14-3-00631-3

The Honorable Stephanie Arend

**Respondent's Brief**

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**ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Did the trial court err by imposing RCW 29.0 9.191 restrictions against Mr. Roderick when there was evidence presented substantiating the finding?
2. Did the trial court err by not imputing income to Ms. Roderick when the issue was never properly raised before the trial court and when there was evidence sufficient for the court to determine that the amount ordered was her actual income and that she was not voluntarily underemployed?
3. Did the trial court err by failing to take statutorily required deductions from Mr. Roderick’s income when he stipulated to his net income in open court?
4. Did the trial court err by awarding Ms. Roderick spousal maintenance in the amount of \$850 a month when the husband’s income was variable enough to infer that he could afford the maintenance and it was ordered for a period of time only long enough to enable her to complete her education?

## STATEMENT OF THE CASE

On February 19, 2015 trial was held before the Hon. Stephanie A. Arend for the dissolution of marriage between Christina Roderick and Brian Roderick. (RP 1) Both parties were unrepresented by counsel and they both testified. The court noted that a Guardian ad Litem had been ordered, but the funds to pay for the Guardian ad Litem had not been paid so one was never appointed. (RP 2)

Christina testified first. She testified that during the marriage she was a stay-at-home mom except for a couple of seasonal jobs. (RP 9-10) Her current employment was as a para educator for Clover Park School District. She began this in December 2013, about 6 months after the separation. This employment is part time and a Commissioner Pro Tem, a little over a month before the trial, determined that her net income was \$650 a month. (RP 10-11) (CP 252)

The parties had no debts at the time of separation because they had recently filed bankruptcy. (RP 40) Brian has a 2003 Dodge Dakota which is fully paid for. (RP 82) Christina requested maintenance to enable her to get through school. (RP 41) It would take her 2 more years to get her teaching certificate. (RP 12)

In regard to financial matters, Brian testified that the \$2600 a month net income listed for him in the temporary order of child support entered a little over a month prior to the trial was correct. (RP 77) He is currently employed as a district manager at Colonial Life working 100% on commission. (RP 76) Under questioning by the Judge he acknowledged that he obtained his current employment one month after the date of separation, in July 2013. (RP 78) He testified that his income varied widely per month anywhere from \$400-\$4000 in a month. (RP 77-78) He stated that he was basically starting a job with this and it was a business for him. (RP 78) His adjusted gross income for 2013 per his unfiled tax return was \$46,510. (EX 6) He had not prepared his taxes for 2014. (RP 80)

When asked if he was in agreement with maintenance Brian responded that he could not afford that because between the \$1123.20 for child support and the \$200 a month for back support he was paying 50% of his income for child support. (RP 96)

In regard to the parenting plan Christina testified that she was in general fine with the parenting plan that had been entered as a temporary plan. (RP 14) However, there was a history of emotional and physical abuse of the children. As a result of this the oldest daughter, Madisen, age 15, was not going for visitation. (RP 15) (CP 80) A motion for contempt

was brought against her but the result of that motion was she was not found in contempt, but Christina was ordered to provide the father with the name of the counselor and he was to be permitted to participate in the counseling. (RP 16-17, 93) The only visitation Madisen has gone to was Christmas and Father's Day. (RP 15-16, 105 )

When asked to describe the abuse, Christina testified that all of the children were subject to "really bad name-calling and putdowns." (RP 17) She described one physical incident where Brian had pushed Madisen and she scraped her foot on an ironing board leg when she was 13 years old. (RP 20-21) However, mainly the abuse was verbal and emotional. Brian always acted like he never does anything wrong and made everyone feel like they were the ones who were always wrong. (RP 22)

CPS was contacted based upon referrals from the counselor and the maternal grandmother. (RP 18, 20) CPS began an investigation but it was ultimately dropped because Brian was no longer residing in the family home. (RP 19)

Because Madisen had "a lot of emotional scarring", Christina got her involved in counseling. (RP 15) Although Brian had the opportunity to participate, he has chosen not to. (RP 15-16) Christina had texted Brian the information regarding counseling, but he told her that he was not

going. She felt that reunification counseling was needed between Madisen and her dad. (RP 23- 24)

Brian denied that there was any abuse and was not willing to go for counseling regarding it, but he was willing to go to counseling to discuss the divorce. (RP 94) Under questioning by the court, Brian finally said that he was willing to go to counseling for whatever issues may be needed with his daughter. (RP 95)

When the Court issued its ruling regarding the parenting plan she stated the following (including Mr. Roderick's comment):

On the second page of the parenting plan, with respect to parental conduct, the Court is going to find that there should be .191 factors because it is my understanding -- and it was not disputed by Mr. Roderick -- Madisen, for whatever reason, is not wishing to go and spend all of the time that she would otherwise spend with Dad, according to the temporary parenting plan, and although Mrs. Roderick said that she does go for major holidays, I believe she said Christmas and she mentioned another one, Father's Day --

MR. RODERICK: Those are the only two.

THE COURT: -- because of that, it indicates to me that there is a significant breakdown between Father and child, and a .191 factor is going to be found, and that will be under Paragraph 2.1, physical, sexual or a pattern of emotional abuse of a child. As a result of that .191 factor, the Court is ordering that Mr. Roderick engage in counseling with his daughter, Madisen, and that such counseling, the scope of the counseling is to be determined by the counselor, not by Mr. Roderick, not by Mrs. Roderick and not by the Court. (RP 104-105)

In regard to child support, the Court adopted the numbers used for the order of child support entered on January 14, 2015. The Court stated that this was based on “agreement of the parties, and on rough calculations based on what mother indicated she earns and father indicates he earns.” (RP 110) However, the Court further elaborated stating:

I think that more than takes into effect the 2013 tax return that Mr. Roderick said that his adjusted gross income for 2013 was \$46,510, acknowledging that part of that was unemployment compensation, but nevertheless the \$2,600 net per month that is on the child support order is actually not including unemployment compensation. It is based on a much lower figure than that. (RP 111)

The Court next addressed maintenance and awarded Christina maintenance in the amount of \$850 a month for a period of 2 years. The Court’s rationale was that it would give “her sufficient time to complete her education, become gainfully employed full time and hopefully able to provide sufficient support for herself and the four children.” (RP 111) When Brian protested that this left him only about \$600 a month to live on the Court responded by stating “I’m aware of the math, yes.” (RP 111)

Brian filed a motion for reconsideration that did not state what he was seeking the court to reconsider other than the “final orders entered on 3/6/15”. (CP 130) All specific requests for reconsideration were essentially contained within his declaration. In his declaration he argued

that the .191 restrictions were in his opinion not justified. (CP 133) He also attached a new letter from the office of one of the counseling facilities where Madisen had previously received counseling. It was not from the counselor who provided the counseling (although in the declaration Brian misstates that it was from the treating counselor) and was not a declaration or under penalty of perjury. The letter stated that Madisen had never disclosed abuse by Brian. (CP 133, 78-79)

Under a section heading entitled “Child Support” Brian argued that the \$2600 figure was a mistake and that this was not his net income, but rather his gross income. (CP 135) He also argued for the first time that he did not know why \$650 was used as income for the mother and argued that her income should have been based on her hourly rate. He also asked the court to impute income to her. (CP 136)

On April 3, 2015 the Court delivered its ruling wherein the above motion for reconsideration was denied. (Supplemental RP 2) The first thing that the Court did was quote from the verbatim report of proceedings page 77 beginning at line 17 wherein Brian confirmed that his net monthly income was \$2600 a month and he had no reason to dispute that. (SRP 3) Based on this, she denied that part of the motion. (SRP 3) The Court further denied the motion to drop maintenance. (SRP 5-6) Finally, the Court refused to drop the .191 restrictions. (SRP 7)

## ARGUMENT

### **I. THE TRIAL COURT DID NOT ERR BY IMPOSING RCW 26.09.191 RESTRICTIONS AGAINST MR. RODERICK AS EVIDENCE WAS PRESENTED WHICH SUBSTANTIATED THE FINDING**

The standard for review of a trial court's decision regarding a parenting plan was stated in the court's decision in the case of *Katare v. Katare*, 175 Wn. 2d 23, 283 P.3d 546, 552 (2012) as follows:

A trial court's parenting plan is reviewed for an abuse of discretion. In re Marriage of Littlefield, 133 Wash.2d 39, 46, 940 P.2d 1362 (1997). An abuse of discretion occurs when a decision is manifestly unreasonable or based on untenable grounds or untenable reasons. Id. at 46–47, 940 P.2d 1362. The trial court's findings of fact will be accepted as verities by the reviewing court so long as they are supported by substantial evidence. Ferree v. Doric Co., 62 Wash.2d 561, 568, 383 P.2d 900 (1963). Substantial evidence is that which is sufficient to persuade a fair-minded person of the truth of the matter asserted. King County v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd., 142 Wash.2d 543, 561, 14 P.3d 133 (2000). (at 35)

Basically, the Court of Appeals will not substitute its opinion for the trial court's in deciding a question of fact. *Thorndike v. Hesperian Orchards, Inc.*, 54 Wn.2d 570, 575, 343 P.2d 183 (1959) Since an appellate court will not make credibility determinations, as long as there is substantial evidence "it does not matter that other evidence may contradict it." *Burrill v. Burrill*, 113 Wn. App. 863, 868, 56 P.3d 993, 996 (2002)

In this case, there was substantial evidence and no abuse of discretion. The statute that applies is RCW 26.09.191 (2)(a), it reads as follows:

The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm; or (iv) the parent has been convicted as an adult of a sex offense .....

In this case, both parties were unrepresented by counsel and the only evidence presented was from themselves. Christina provided testimony that the child was subject to mental and emotional abuse because of the father's name calling, putdowns, and the attitude prevailing in the home that he never did anything wrong and everyone else was wrong. She also testified to an incidence of physical abuse when the father pushed her into an ironing board.

The child was 14 years old when the temporary parenting plan was ordered, but she was 15 years old at the time of the trial and throughout this time had refused to go for visitation. A motion for contempt filed by the father was unsuccessful except that it ordered that he was to be given information regarding the counselor and given the opportunity to

participate in counseling. Christina testified that Brian never participated in counseling. She further believed that reunification counseling was needed.

Two independent sources made CPS referrals regarding Brian's conduct with Madisen, although it appears that the investigation may have been terminated without making a finding. The fact that the father may have denied any abuse does not mean that the testimony provided by the mother was insufficient for the Court to determine the 26.09.191 limitation should be imposed. The Court clearly believed the mother to be more credible and that the consistent refusal of the daughter to participate in visitation on a regular basis was additional objective evidence of the mental and emotional abuse.

The court, utilizing the mandatory pattern form for a parenting plan, did make a written finding in paragraph 2.1 that there was a basis for restrictions based upon "physical, sexual or a pattern of emotional abuse of a child." (CP 81)

The Court was also not obliged to consider inadmissible evidence such as the hearsay letter from the office of one of Madisen's former counselors (it was not even from the counselor herself). The Court was also entitled to consider what if any weight to give the letter even if it was admitted.

Therefore based upon the testimony of Christina regarding the emotional abuse, really bad name-calling, putdowns, prevailing attitude of everyone is wrong in the home; the fact that this rose to the level that independent referrals were made to CPS, coupled with the fact that the daughter was refusing to participate in most visitation, and the fact that the father had also refused previously to participate in reunification counseling and do anything to work with the daughter, the Court had substantial evidence from which to determine that .191 factors were in order based upon emotional abuse. As a result, there was no abuse of discretion in this case and this Court must affirm the Trial Court.

**II. THE TRIAL COURT DID NOT ERR BY NOT IMPUTING INCOME TO MS. RODERICK AS THE ISSUE WAS NEVER PROPERLY RAISED BEFORE THE TRIAL COURT, AND EVEN IF IT HAD BEEN, THERE WAS SUFFICIENT EVIDENCE FOR THE COURT TO DETERMINE HER NET INCOME AND SHE WAS NOT VOLUNTARILY UNDEREMPLOYED.**

The standard of review for child support is an abuse of discretion. *Matter of Marriage of Booth*, 114 Wn. 2d 772, 776, 791 P.2d 519, 521 (1990). The appellate court will not substitute its judgment for the trial court “unless the trial court’s decision rests on unreasonable or untenable grounds.” *In re Marriage of Dodd*, 120 Wash.App. 638, 644, 86 P.3d 801 (2004) cited in *Goodell v. Goodell*, 130 Wn. App. 381, 388, 122 P.3d 929, 933 (2005).

In this case, the court did have testimony from Christina that she made \$14.66 an hour working part-time since December 2013. However, just over a month earlier a Commissioner pro tem, with all of the financial information of both parties in front of it, had determined that Christina's net income was \$650 a month and Brian's net income was \$2600 month. In that hearing Brian's child support was reduced from \$1175 a month to \$1123 a month. (RP 42) (CP 253) In direct response to the Court's question whether Brian had any reason to dispute \$2600 a month as his net income, he stated "I don't." (RP 77)

The only dispute from either party with the temporary order of child support was that Christina thought that the child support number was too low and Brian thought the number was too high. Christina thought the child support should be set at \$1175 a month. (RP 44) Brian thought child support should be \$882.80 because that was what his prior attorney had calculated. (RP 96-97) Brian never argued that income should be imputed to Christina nor did he ever argue the \$650 a month net income that was listed for her in the child support worksheets for the temporary order was incorrect.

The first time it was ever argued that income should be imputed to Christina was in the motion for reconsideration. (CP 135) The court rule for reconsideration is CR 59, which in pertinent part reads as follows:

(a) Grounds for New Trial or Reconsideration. On the motion of the party aggrieved, a verdict may be vacated and a new trial granted to all or any of the parties, and on all issues, or on some of the issues when such issues are clearly and fairly separable and distinct, or any other decision or order may be vacated and reconsideration granted. Such motion may be granted for any one of the following causes materially affecting the substantial rights of such parties:

(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial;

(2) Misconduct of prevailing party or jury; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict or to a finding on any question or questions submitted to the jury by the court, other and different from the juror's own conclusions, and arrived at by a resort to the determination of chance or lot, such misconduct may be proved by the affidavits of one or more of the jurors;

(3) Accident or surprise which ordinary prudence could not have guarded against;

(4) Newly discovered evidence, material for the party making the application, which the party could not with reasonable diligence have discovered and produced at the trial;

(5) Damages so excessive or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice;

(6) Error in the assessment of the amount of recovery whether too large or too small, when the action is upon a contract, or for the injury or detention of property;

(7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;

(8) Error in law occurring at the trial and objected to at the time by the party making the application; or

(9) That substantial justice has not been done.

In this case, there was nothing in the motion anywhere that cites or references any of the above reasons as a basis for the Court to reconsider its decision. Instead of arguing “newly discovered evidence” as a basis for the motion, Brian appeared to be arguing “newly discovered law” because he was not represented by counsel and did not know the law at the time of the trial. However, this is not one of the enumerated basis for reconsideration and an error of law would have had to have been objected to at the time of trial. Therefore, imputing income to Christina would not appear to be an issue that was properly preserved for reconsideration or appeal as it was not something that was ever appropriately raised with or argued to the trial court.

Even if this Court were to consider this issue proper for appeal, that still does not mean that the trial court committed error in failing to impute income to Christina. The statute, RCW 26.19.071(6) reads in pertinent part as follows:

(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.

In this case, Christina during the course of a nearly 15 year marriage, only worked a couple of part-time jobs on 2 occasions for a few months each in addition to working for Wells Fargo Bank up until their first child was born (who was 15 years old at the time of the trial). Although she did have an Associate degree in Arts and Science (RP 12), she still needed another 2 years of school in order to finish her education and get a teaching certificate. It was undisputed and acknowledged by both parties that during the course of the marriage Christina was a stay-at-home mom. (RP 9, 75) She was able to find this employment about 6 months after the separation. (RP 10) She would work full-time if she was able to find a full-time job, which she has not been able to do. (RP 64) There was no proof, nor testimony that Ms. Roderick had foregone any employment opportunities or was seeking to limit her hours of work to reduce her income. She was a stay-at-home mom who found appropriate employment as soon as she was able to and in fact was seeking to improve her education in order to improve her employment opportunities. Given the above, it would not appear to be an abuse of discretion for the Court to have determined that she was working as much as she was able to and as a result was not voluntarily unemployed or underemployed such that a

mandatory imputation of income would need to be imposed. As a result, this would not amount to an abuse of discretion.

For all of the above reasons, it is clear that it was not error for the Court to accept the child support numbers that had been determined in a prior hearing that had been conducted slightly over a month prior to trial. A motion for revision was never filed and neither party disputed the net income figures that have been calculated by the commissioner pro tem. As a result, the Court was well within its discretion to accept these numbers for purposes of child support.

**III. THE TRIAL COURT DID NOT ERR BY FAILING TO PROVIDE MR. RODERICK WITH STATUTORILY REQUIRED DEDUCTIONS FROM HIS INCOME FOR PURPOSES OF CALCULATING CHILD SUPPORT AS MR. RODERICK STIPULATED IN OPEN COURT TO A NET INCOME OF \$2600.**

The standard of review for this assignment of error is the same as the one above. In this case, Mr. Roderick, on the record, admitted that his net income was \$2600. It had also been determined in the hearing slightly over a month prior to the trial date that his net income was \$2600 and he never sought revision of that decision, nor did he dispute that in the trial. The trial court was therefore well within its discretion to accept \$2600 as his net income and to not take any additional deductions from that amount.

**IV. THE TRIAL COURT DID NOT ERR IN AWARDING SPOUSAL MAINTENANCE TO MS. RODERICK AS SHE HAD BEEN A STAY-AT-HOME MOM, WITH 4 CHILDREN TO PROVIDE FOR, AND THE SPOUSAL MAINTENANCE WAS ONLY IMPOSED FOR A DURATION OF TIME LONG ENOUGH TO ALLOW HER TO COMPLETE HER EDUCATION, ALSO, THE EVIDENCE REGARDING THE HUSBAND'S INCOME WAS VARIABLE ENOUGH TO ALLOW AN INFERENCE THAT HE COULD AFFORD TO PAY MAINTENANCE.**

RCW 26.09.090. deals with maintenance and states as follows:

(1) In a proceeding for dissolution of marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for maintenance following dissolution of the marriage or domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner, the court may grant a maintenance order for either spouse or either domestic partner. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to misconduct, after considering all relevant factors including but not limited to:

(a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of life, and other attendant circumstances;

(c) The standard of living established during the marriage or domestic partnership;

(d) The duration of the marriage or domestic partnership;

(e) The age, physical and emotional condition, and financial obligations of the spouse or domestic partner seeking maintenance; and

(f) The ability of the spouse or domestic partner from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse or domestic partner seeking maintenance.

In regard to the first item, (a), in this case, the Court was aware that Christina had been a stay-at-home mom for the vast majority of the marriage, had minimal income, and was supporting four children. The house was being foreclosed on and the parties did not have any savings or financial assets. Christina was not awarded any property in the dissolution of marriage. She was awarded child support in the amount of \$1123 a month and had a net income of \$650, but when that is combined with \$850 a month net income, that only gave her \$2,623 a month total income for herself and four children.

In regard to (b), maintenance was only ordered for 2 years. This was the amount of time testified to by Christina that she needed in order to complete her education and get her teaching certificate. This would provide her with the education necessary to provide for herself and their four children.

Item (c), standard of living during the marriage, there was not a great deal of testimony regarding this. The point of the maintenance in

this case did not appear to be to maintain any standard of living, but rather to allow Christina and the children to live and give her a fighting chance to obtain the education necessary to provide for herself and the children.

Item (d), duration of the marriage, the parties separated after being married for nearly 15 years. This was not a short-term marriage.

Item (e), in regard to Christina's age, although Christina's age may have been found by the Court if it reviewed the court file, the actual record is silent regarding her age. Brian testified that he was 39 (RP 81) and Christina would have been of comparable age. There was no testimony regarding any physical issues with Christina. Brian attempted to testify that she had suffered from depression, but the court did not permit him to solicit or present testimony regarding this. (RP 50, 65-66) The parties had filed bankruptcy shortly before separating and the family home was currently in foreclosure.

In regard to item (f) the ability of Brian to pay maintenance and meet his financial obligations, this is where Brian is arguing that there was an error on the part of the Court. When the Court entered its ruling for child support and maintenance, Brian told the Court that its order left him with "about \$600 a month to live on" (RP 111). The Court's reply was "I'm aware of the math, yes." (RP 111).

During the hearing on the motion for reconsideration Mr. Helland, attorney for Brian, and the court had the following exchange:

MR. HELLAND: All right. And then, again, on the issue of total spousal maintenance and child support, I guess the Court is denying any reconsideration on that, giving him \$600 a month to live?

THE COURT: I didn't rule that he had \$600 a month to live. It's his position on reconsideration, yes.

MR. HELLAND: Yes, but I'm just correct that the Court adopted the worksheets, obviously, that set his income at \$2,600 a month. So if we're ordering \$1,975, I think, by the math, we have to come out at \$625. Am I correct?

THE COURT: Mm-hm.

MR. HELLAND: All right. That's all I need. (SRP 10)

It becomes clearer from this exchange that the Court did not find that Brian's net income was actually \$2600, only that she was using that as his net income for purposes of child support. She did not accept or find that he only had \$600 a month to live on, but that was only Brian's assertion. The Court clearly believed that Brian did have more than \$600 a month to live on.

That the court did not find that Brian's actual net income was \$2600 is clear from her ruling in regard to child support. In doing so she stated:

I think that more than takes into effect the 2013 tax return that Mr. Roderick said that his adjusted gross income for 2013 was \$46,510, acknowledging that part of that was unemployment compensation, but nonetheless the \$2,600 net per month that's on the child support order is actually not including unemployment compensation. It's based on a much lower figure than that. (RP 110-111)

The Court clearly believed that \$2600 as a net income was on the low side for Mr. Roderick based upon the fact that his 2013 adjusted gross income was \$46,510 (he did not provide a 2014 tax return). When that number is divided by 12, it comes to \$3875.83.

Also Brian testified that his monthly income varied anywhere from \$400-\$4000 a month and that his work was like starting a new business. Given the volatility of his monthly income and the fact that he was capable of earning as much as \$4000 a month, the Court could certainly have inferred that even though child support was set based on a net income figure of \$2600 a month, Brian was capable of, and based on prior years tax returns had in fact earned, more than this. This inference was also justifiable given the fact that Brian did not provide the Court with a 2014 tax return. Therefore the Court did not make a finding that Brian's net income was \$2600 period, but only for purposes of child support. As a result, the court was not persuaded by his protestations that he only had \$600 of income left at the end of the month to live on. Due to the Brian's failure to provide his 2014 income tax return, the Court was certainly

entitled to believe that his actual earnings may well been \$4000 a month leaving him over \$2000 a month after paying maintenance. As a result, there was no abuse of discretion and the ruling of the Court must be upheld.

### **CONCLUSION**

The Trial Court did not abuse its discretion by entering restrictions against Brian based upon RCW 26.09.191 as there was evidence sufficient from which the court found emotional abuse.

There was no error by the Court in failing to impute income to Christina because there was never a request to do so during the trial and no basis to do so on reconsideration. Furthermore, Christina was not voluntarily underemployed and there was therefore no reason to impute income to her. Likewise, there was no error by the Court in not taking deductions from the \$2600 a month net income of Brian because he clearly testified at trial that \$2600 a month was his net income.

There was no error on the part of the Court in awarding maintenance to Christina because she met the statutory criteria for award of maintenance and based upon the testimony provided at trial there was evidence sufficient for the court to infer that Brian had income sufficient to pay the maintenance.

Respectfully submitted on September 16, 2015.



Clayton R. Dickinson, WSBA No. 13723  
Attorney for Respondent

CERTIFICATE OF MAILING

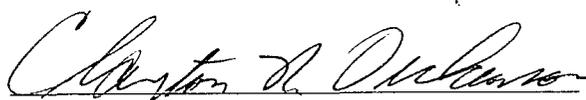
I certify that I mailed a copy of Respondent's Brief Review to:

Andrew Helland  
Helland Law Group, PLLC  
960 Market Street  
Tacoma, WA 98402

All postage prepaid, on September 16, 2015.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF  
THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE  
AND CORRECT.

Signed at Fircrest, Washington on September 16, 2015.



Clayton R. Dickinson, WSBA No. 13723  
Attorney for Respondent

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