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Court of Appeals  
Division II  
State of Washington  
7/2/2018 11:34 AM

No. 51272-6-II

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

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IN THE MATTER OF

DARYL LANTZ,  
Petitioner/Appellee

&

DAWN R. LANTZ  
Respondent/Appellant

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BRIEF OF APPELLANT

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Desmond Kolke, WSBA # 23563  
Attorney for Dawn R. Lantz  
Law Offices of Desmond Kolke  
1201 Pacific Ave., #600  
Tacoma, WA 98402

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Order of Child Support dated April 17, 2015

**TABLE OF AUTHORITIES**

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## **INTRODUCTION & BACKGROUND FACTS**

On April 17, 2015 the Court entered a Final Order of Child Support that provided for Post Secondary Support of the Parties' daughter. (See Appendix) The Final Order of Child Support provided that pursuant to the provisions of RCW 26.19.090, the Appellant and the Appellee would each be responsible for two thirds (2/3) of the post secondary support and reasonable necessities of life for their daughter. The financial responsibility of the two-thirds (2/3) was allocated between the Appellant and the Appellee based on the proportional share of net income pursuant to the Washington Child Support Schedule Worksheet with the Appellant being responsible for two-thirds (2/3) and the Appellee being responsible for one-third (1/3). (Appendix – Order of Child Support – Final dated April 17, 2015, Page 4, Section 3.14)

On July 28, 2017, the Appellee filed a motion for contempt to collect \$20,524.86 for past due child support (post-secondary support). (CP 88 - 94) Included with the Appellee's filings were proof of the Parties' daughter's enrollment records, spreadsheets detailing expenses, and grade transcripts. (CP 1-87)

On October 17, 2017, the trial court awarded \$20,276.85 in past due child support (post-secondary support). (CP 229 - 230)

On October 27, 2017, the Appellant filed a motion for Reconsideration detailing numerous reasons for the Appellant's request for reconsideration. (CP 231 - 236) Among those reasons, was the failure of the Parties' daughter to "...make available all academic records and grades to both parents as a condition of receiving postsecondary educational support. The Appellant made it clear to the trial court that under RCW 26.19.090(4) each parent was to have full and equal access to the postsecondary education records. In the materials filed in response to the Appellee's motion, the Appellant detailed her attempt to gain access with the information that was provided her, however, without the Parties' daughter expressly giving consent to the Appellant, the Appellant was unable to gain access to her daughter's academic records pursuant to the Family Educational Rights and Privacy Act (FERPA). (CP 227 – 228; 235)

On November 22, 2017, the trial court denied the Appellant's motion for Reconsideration. The Appellant appeals the decision of the trial court and the award of past due post-secondary support of \$20,276.85. (CP 245 – 246)

## **II. ASSIGNMENT OF ERROR**

The trial court erred by granting the Appellee's request for an award for past due post-secondary support when the Parties' daughter has failed to

complete the necessary paperwork/documentation at her school to “make available all academic records and grades to both parents pursuant to RCW 26.19.090(4). (CP 229 – 230)

### **III. ISSUES PERTAINING TO ASSIGNMENT OF ERROR**

Does RCW 26.19.090(4) require the student to complete all necessary paperwork/documentation with the post-secondary school that they are attending to give access, including consent, to each parent for all academic records and grades as a condition to receiving post-secondary support?

### **IV. ARGUMENT**

The standard of review in regards to Child Support decisions is whether the court has abused its discretion. In re Marriage of Fiorito, 112 Wash.App. 657, 663-64, 50 P.3d 298 (2002). A court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or reasons. *Id.*

It has long been established that RCW 26.19.090 sets conditions for receiving postsecondary educational support. RCW 26.19.090(4) requires that the student, the parents’ child, “make available all academic records and grades to both parents as a condition of receiving postsecondary

educational support. Each parent shall have full and equal access to the postsecondary education records.”

As noted in In Re Marriage of Jess, 136 Wn.App. 922, 926-927, 151 P.3d 240 (2007), the phrase “make ‘available’ ” is not defined by the legislature and the court in Jess looked to the common meaning as defined by Webster’s Third New International Dictionary 150 from 1993 which defined the term “available” as “accessible or may be obtained. Webster's Third New International Dictionary 150 (1993).

The Child Support Order entered in this matter on April 17, 2015 states that as “long as the child is enrolled in Post-Secondary Education pursuant to RCW 26.19.090 and is in fact dependent and is relying upon the parents for the reasonable necessities of life, the responsibility for Post Secondary Support shall be allocated as follows.” The order then specifies in section 3.14 how to calculate the Parties’ daughter’s educational support. For example, section 3.14 obligates the parents to pay two-thirds of their daughter’s net support obligation, with the Appellant to pay two-thirds (2/3) of that portion and the Appellee to pay one-third (1/3) of that portion.

The fact that section 3.14 provides as a condition that their daughter is to be enrolled pursuant to RCW 26.19.090, incorporates the provisions of RCW 26.19.090, and in particular RCW 26.19.040(4), which requires the Parties’ daughter to “make available” her academic records and grades to

both parents. It is clear that RCW 26.19.090(4) requires that “each parent shall have full and equal access to the postsecondary education records.”

It is clear from the record that the Parties’ daughter failed to fulfill the conditions necessary to obligate her parents to pay postsecondary support, and the trial court applied an incorrect view of RCW 26.19.090(4)’s legal effect, and as a result the trial court’s decision awarding past due post-secondary support is on untenable ground. Fiorito, 112 Wash.App. at 663-64, 50 P.3d 298.

RCW 26.19.090(4) is unambiguous and the statute requires the Parties’ daughter to “make available” her academic records and grades to both parents. No evidence was presented by the Appellee in the hearings in this matter to demonstrate that the Parties’ daughter had given her consent to the institution that she was attending for the Appellant to have access as required by RCW 16.19.090(4). The record is clear that the Parties’ daughter provided assorted materials in support of the Appellee’s motion, including grades, spreadsheets, and proof of expenses, however the condition for receiving post-secondary support is giving access to each parent and not providing grade transcripts, enrollment evidence, etc.

The record is clear that the Appellant was provided her daughter’s student ID and knew her daughter’s social security number. However, the record is also clear that her daughter had not given consent for the

Appellant to have access to the information pursuant to RCW 26.19.090(4).

RCW 26.19.090(4) requires the Parties' daughter to complete all necessary paperwork/documentation with the post-secondary school that they are attending to consent to access for each parent to all academic records and grades as a condition to receiving post-secondary support

It is clear that the award of past due post-secondary support was in error by the trial court and was erroneous in light of the requirement of RCW 26.19.090(4) that requires a child that is attending a post-secondary institution to give access, which would include consent, to all academic records and grades to each parent.

#### B. CONCLUSION

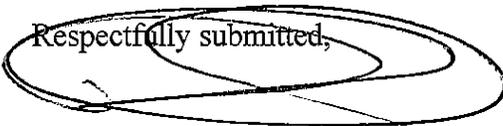
Privacy concerns have led to increased levels of protection for all individuals and that includes students that are attending post-secondary institutions. The concern for the privacy of students has resulted in the adoption of the Family Educational Rights and Privacy Act (FERPA) which requires a student to give consent for anyone other than the student to have access to the student's academic records. Specifically, the Family Educational Rights and Privacy Act requires post-secondary institutions to have written permission from the eligible student in order to release any information from a student's education record.

The result as it applies in this case is that the Appellant's daughter

has failed to give consent for the Appellant to have access to her Academic records and grades as specified in RCW 26.19.090(4). Giving consent to the Appellant for access to the all of the Parties' daughter's academic records and grades is a condition for the Appellant's daughter to receive post-secondary support from the Appellant. The trial court's award of past due post-secondary support is not supported by the conditional requirement of RCW 26.19.090(4) and the award was an abuse of discretion by the trial court. As a result, the Appellant respectfully requests this court find that the trial court abused its discretion and to reverse the award of \$20,276.85; to award attorney's fees and costs to the Appellant for pursuing this appeal, and to award any other relief the court deems appropriate and just.

Dated this 2<sup>nd</sup> day of July, 2018

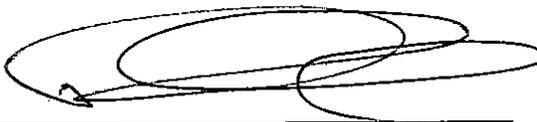
Respectfully submitted,



Desmond Kolke, WSBA #23563  
Attorney for Dawn R. Lantz  
Law Offices of Desmond Kolke  
1201 Pacific Ave., #600  
Tacoma, WA 98402

CERTIFICATE OF SERVICE

I certify that on the 2nd day of July, 2018, in Enumclaw, Washington, I caused a true and correct copy of the preceding Brief of Appellant and attached Appendix consisting of the nine (9) page Order of Child Support – Final dated April 17, 2015 to Division II of the Washington Court of Appeals and to Ms. Jacqueline McMahon at [ortinglaw@aol.com](mailto:ortinglaw@aol.com) .

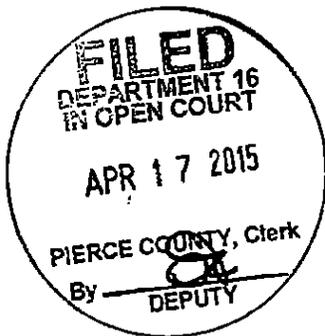
By:   
Desmond Kolke, WSBA # 23563

APPENDIX

In re Marriage of Lantz – “Order of Child Support – Final”  
dated April 17, 2015

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Superior Court of Washington  
County of PIERCE

In re Marriage of:	No 12-3-04740-4
DARYL LANTZ	Order of Child Support
vs.	[ ] Temporary (TMORS)
DAWN LANTZ	[X] Final Order (ORS)
Petitioner,	
Respondent.	Clerk's Action Required

I. Judgment Summary

- 1.1 Judgment Summary for Non-Medical Expenses  
[X] Does not apply.
- 1.2 Judgment Summary for Medical Support  
[X] Does not apply.

II. Basis

- 2.1 Type of Proceeding  
This order is entered under a petition for dissolution of marriage or domestic partnership, legal separation, or declaration concerning validity:  
[X] Trial
- 2.2 Child Support Worksheet  
Not applicable as this order of Child Support pertains to Post Secondary Support only and is based on Findings of the Court at Trial.

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1 2.3 Other

2 **III. Findings and Order**

3 ***It Is Ordered:***

4 **3.1 Child(ren) for Whom Support is Required**

5 Name (first/last) Age  
6 Sheridan 19

7 **3.2 Person Paying Support (Obligor)**

8 Name (first/last): Darryl Lantz  
9 Birth date:  
10 Service Address: (You may list an address that is not your residential address where  
11 you agree to accept legal documents.)

12 ***The Obligor Parent Must Immediately File With the Court and the  
13 Washington State Child Support Registry, and Update as Necessary, the  
14 Confidential Information Form Required by RCW 26.23.050.***

15 ***The Obligor Parent Shall Update the Information Required by Paragraph 3.2  
16 Promptly After any Change in the Information. The Duty to Update the  
17 Information Continues as long as any Support Debt Remains due Under  
18 This Order.***

19 For purposes of this Order of Child Support, the support obligation is based upon the  
20 following income:

21 A.  Monthly Net Income Imputed at : \$ 2,500.00. See Court findings.

22 **3.3 Person Receiving Support (Obligee)**

23 Name (first/last): Dawn Lantz  
24 Birth date:  
25 Service Address: (You may list an address that is not your residential address where  
you agree to accept legal documents.)

***The Obligee Must Immediately File With the Court and the Washington  
State Child Support Registry and Update as Necessary the Confidential  
Information Form Required by RCW 26.23.050.***

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**The Obligee Shall Update the Information Required by Paragraph 3.3 Promptly After any Change in the Information. The Duty to Update the Information Continues as Long as any Monthly Support Remains Due or any Unpaid Support Debt Remains Due Under This Order.**

For purposes of this Order of Child Support, the support obligation is based upon the following income:

Monthly Net Income : \$ 4,912.23. See Court findings

The obligor may be able to seek reimbursement for day care or special child rearing expenses not actually incurred. RCW 26.19.080.

**3.4 Service of Process**

**Service of Process on the Obligor at the Address Required by Paragraph 3.2 or any Updated Address, or on the Obligee at the Address Required by Paragraph 3.3 or any Updated Address, may Be Allowed or Accepted as Adequate in any Proceeding to Establish, Enforce or Modify a Child Support Order Between the Parties by Delivery of Written Notice to the Obligor or Obligee at the Last Address Provided.**

**3.5 Transfer Payment**

See 3.11 and 3.14 below.

**The Obligor Parent's Privileges to Obtain or Maintain a License, Certificate, Registration, Permit, Approval, or Other Similar Document Issued by a Licensing Entity Evidencing Admission to or Granting Authority to Engage in a Profession, Occupation, Business, Industry, Recreational Pursuit, or the Operation of a Motor Vehicle may Be Denied or may Be Suspended if the Obligor Parent is not in Compliance With This Support Order as Provided in Chapter 74.20A Revised Code of Washington.**

**3.6 Standard Calculation**

Does not apply.

**3.7 Reasons for Deviation From Standard Calculation**

Does not apply.

**3.8 Reasons why Request for Deviation Was Denied**

Does not apply.

**3.9 Starting Date and Day to Be Paid**

May 1, 2015

**3.10 Incremental Payments**

Does not apply.

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**3.11 Making Support Payments**

Both parents' payments for postsecondary educational expenses shall be made directly to the educational institution if feasible. If direct payments are not feasible, then both parents' payments shall be made directly to the child if the child does not reside with either parent. If the child resides with one of the parents then the parent making the support transfer payments shall make the payments to the child or to the parent with whom the child is living with.

**3.12 Wage Withholding Action**

Withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the obligor parent at any time after entry of this order unless an alternative provision is made below:

**3.13 Termination of Support**

Does not apply

**3.14 Post Secondary Educational Support**

As long as the child is enrolled in Post-Secondary Education under RCW 26.19.090 and is in fact dependent and is relying upon the parents for the reasonable necessities of life, the responsibility for Post Secondary Support shall be allocated as follows.

The child shall pay 1/3 of her post secondary education support and reasonable necessities for life.

Obligor shall pay 33.7% of the remaining 2/3 required for post secondary support and reasonable necessities of life.

Obligee shall pay 66.3% of the remaining 2/3 required for post secondary support and reasonable necessities for life.

**3.15 Payment for Expenses not Included in the Transfer Payment**

Does not apply because all payments, except medical, are included in the transfer payment.

**3.16 Periodic Adjustment**

Does not apply.

**3.17 Income Tax Exemptions**

The parents shall sign the federal income tax dependency exemption waiver.

**3.18 Medical Support - Health Insurance**

Each parent shall provide health insurance coverage for the children listed in paragraph 3.1, as follows:

**3.18.1 Health Insurance** (either check box A(1) or check box A(2) and complete sections B and C. *Section D applies in all cases.*)

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A. Evidence

(1)  There is insufficient evidence for the court to determine which parent must provide coverage and which parent must contribute a sum certain. Therefore, the court is not specifying how insurance coverage shall be provided. The petitioner's and respondent's medical support obligations may be enforced by the Division of Child Support or the other parent under RCW 26.18.170 as described in paragraph 3.18.2, below.

OR

(2)  There is sufficient evidence for the court to determine which parent must provide coverage and which parent must contribute a sum certain. Fill in B and C below.

B. Findings about insurance:

- Does not apply because A (1) is checked, above
- The court makes the following findings:

Darryl Lantz (Parent's Name)	Dawn Lantz (Parent's Name)	Check at least one of the following findings for each parent.
<input type="checkbox"/>		Insurance coverage for the children is available <u>and</u> accessible to this parent at \$ cost (children's portion of the premium, only).
	<input type="checkbox"/>	Insurance coverage for the children is available <u>and</u> accessible to this parent at \$ cost (children's portion of the premium, only).
<input type="checkbox"/>		Insurance coverage for the children is available <u>but not</u> accessible to this parent at \$ cost (children's portion of the premium, only).
	<input type="checkbox"/>	Insurance coverage for the children is available <u>but not</u> accessible to this parent at \$ cost (children's portion of the premium, only).
<input type="checkbox"/>		Neither parent has available or accessible insurance through an employer or union; but this parent is able to provide private coverage at a cost not to exceed 25% of this parent's basic support obligation.
	<input type="checkbox"/>	Neither parent has available or accessible insurance through an employer or union; but this parent is able to provide private coverage at a cost not to exceed 25% of this parent's basic support obligation.
<input type="checkbox"/>	<input type="checkbox"/>	(Check only one parent) Both parties have available and accessible coverage for the children. The court finds that this parent has better coverage considering the needs of the children, the cost and extent of each parent's coverage, and the

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		accessibility of the coverage.
<input type="checkbox"/>	<input type="checkbox"/>	Other:

C. Parties' obligations:

- Does not apply because A (1) is checked above.
- The court makes the following orders:

Darryl Lantz (Parent's Name)	Dawn Lantz (Parent's Name)	Check at least one of the following options for each parent.
<input type="checkbox"/>	<input type="checkbox"/>	This parent shall provide health insurance coverage for the children that is available through <b>employment or is union-related</b> as long as the cost of such coverage <u>does not exceed</u> 25% of this parent's basic support obligation.
<input type="checkbox"/>	<input type="checkbox"/>	This parent shall provide health insurance coverage for the children that is available through <b>employment or is union-related</b> even though the cost of such coverage <u>exceeds</u> 25% of this parent's basic support obligation. It is in the best interests of the children to provide such coverage despite the cost <b>because:</b>
<input type="checkbox"/>	<input type="checkbox"/>	This parent shall provide <b>private</b> health insurance coverage for the children as long as the cost of such coverage <u>does not exceed</u> 25% of this parent's basic support obligation.
<input type="checkbox"/>	<input type="checkbox"/>	This parent shall provide <b>private</b> health insurance coverage for the children even though the cost of such coverage <u>exceeds</u> 25% of this parent's basic support obligation. It is in the best interests of the child(ren) to provide such coverage despite the cost <b>because:</b>

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[ ]	[ ]	This parent shall pay \$        towards the health insurance premium being paid by the other parent. This amount is this parent's proportionate share of the premium or 25% of this parent's basic support obligation, whichever is less. This payment is only required if this parent is not providing insurance as described above.
[ ]	[ ]	This parent's contribution to the health insurance premium is calculated in the Worksheet and included in the transfer payment.
[ ]	[ ]	This parent shall be <b>excused</b> from the responsibility to provide health insurance coverage and from the responsibility to provide monthly payment towards the premium <b>because:</b>  (Only one parent may be excused.)

D. Both parties' obligation:

If the children are receiving state financed medical coverage, the Division of Child Support may enforce the responsible parent's monthly premium.

The parent(s) shall maintain health insurance coverage, if available for the children listed in paragraph 3.1, until further order of the court or until health insurance is no longer available through the parents' employer or union and no conversion privileges exist to continue coverage following termination of employment.

A parent who is required under this order to provide health insurance coverage is liable for any covered health care costs for which that parent receives direct payment from an insurer.

A parent who is required under this order to provide health insurance coverage shall provide proof that such coverage is available or not available within 20 days of the entry of this order to the other parent or the Washington State Support Registry if the parent has been notified or ordered to make payments to the Washington State Support Registry.

If proof that health insurance coverage is available or not available is not provided within 20 days, the parent seeking enforcement or the Department of Social and Health Services may seek direct enforcement of the coverage through the other parent's employer or union without further notice to the other parent as provided under Chapter 26.18 RCW.

**3.18.2 Change of Circumstances and Enforcement**

A parent required to provide health insurance coverage must notify both the Division of Order of Child Support (TMORS, ORS) - Page 7 of 9  
WPF DR 01.0500 Mandatory (6/2010) - RCW 26.09.175; 26.26.132

*Law Offices of Desmond Kolke*  
1201 Pacific Avenue South, #600  
Tacoma, WA 98402  
(888) 631 - 6957

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Child Support and the other parent when coverage terminates.

If the parents' circumstances change, or if the court has not specified how medical support shall be provided, the parents' medical support obligations will be enforced as provided in RCW 26.18.170. If a parent does not provide proof of accessible coverage for the child(ren) through private insurance, a parent may be required to satisfy his or her medical support obligation by doing one of the following, listed in order of priority:

- Providing or maintaining health insurance coverage through the parent's employment or union at a cost not to exceed 25% of that parent's basic support obligation;
- Contributing the parent's proportionate share of a monthly premium being paid by the other parent for health insurance coverage for the child(ren) listed in paragraph 3.1 of this order, not to exceed 25% of the obligated parent's basic support obligation; or
- Contributing the parent's proportionate share of a monthly premium paid by the state if the child(ren) receives state-financed medical coverage through DSHS under RCW 74.09 for which there is an assignment.

A parent seeking to enforce the obligation to provide health insurance coverage may apply for support enforcement services from the Division of Child Support; file a motion for contempt (use form WPF DRPSCU 05.0100, Motion/Declaration for an Order to Show Cause re Contempt); or file a petition.

**3.19 Uninsured Medical Expenses**

Both parents have an obligation to pay their share of uninsured medical expenses.

The petitioner shall pay 33.7% of uninsured medical expenses (unless stated otherwise, the petitioner's proportional share of income from the Worksheet, line 6) and the respondent shall pay 66.3% of uninsured medical expenses (unless stated otherwise, the respondent's proportional share of income from the Worksheet, line 6).

**3.20 Back Child Support**

Back child support that may be owed is not affected by this order.

**3.21 Past Due Unpaid Medical Support**

Unpaid medical support that may be owed is not affected by this order.

**3.22 Other Unpaid Obligations**

Other obligations that may be owed are not affected by this order.

**3.23 Other**

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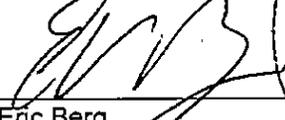
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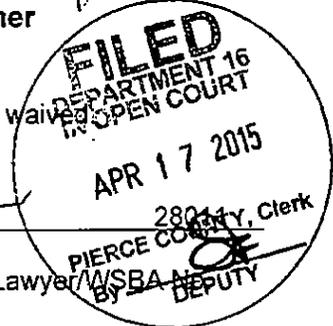
*Elizabeth Hale*  
Judge/Commissioner

Presented by:  
  
23563

Desmond Kolke,  
Signature of Party or Lawyer/WSBA No.

Approved for entry:  
Notice of presentation waived

  
Eric Berg  
Signature of Party or Lawyer/WSBA No.



I apply for full support enforcement services from the DSHS' Division of Child Support (DCS).3  
(Note: If you never received TANF, tribal TANF, or AFDC, an annual \$25 fee applies if over \$500 is disbursed on a case, unless the fee is waived by DCS.)

Stephanie Scanapico

Approval required in Public Assistance cases. The DSHS' Division of Child Support received notice required by RCW 26.23.130. This order has been reviewed and approved as to:

- Current Child Support
- Back Child Support
- Medical Support
- Other:

Deputy Prosecuting Attorney/WSBA No.

*Dawn Lantz*  
Dawn Lantz, Respondent

**LAW OFFICES OF DESMOND KOLKE**

**July 02, 2018 - 11:34 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 51272-6  
**Appellate Court Case Title:** In RE: Daryl Lantz, Respondent v Dawn Lantz, Appellant  
**Superior Court Case Number:** 12-3-04740-4

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