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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In re the Marriage of:
BRENDA A. WILSON,
Appellant/Cross-Respondent,
and
GARY W. WILSON,
Respondent/Cross-Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR CLARK COUNTY
THE HONORABLE SUZAN L. CLARK

REPLY BRIEF OF RESPONDENT/CROSS-APPELLANT

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TABLE OF CONTENTS

I. CROSS-REPLY ARGUMENT1

 A. This Court should reverse and vacate the trial court’s 100% downward deviation from the standard calculation for child support because it is not supported by the evidence.....1

 B. This Court should reverse the property division because it conflicts with the terms of the prenuptial agreement that the trial court found “valid and enforceable.” 5

 1. The trial court erred in awarding a disproportionate share of the community property to the wife, instead of dividing the community estate as “equally as possible,” as required by the agreement. 5

 2. The trial court erred in effectively awarding the wife the husband’s separate property when the prenuptial agreement prohibited the award of any separate property of one party to the other.....7

II. CONCLUSION 9

TABLE OF AUTHORITIES

	Page(s)
STATE CASES	
<i>In re A.L.</i> , 185 Wn. App. 225, 340 P.3d 260 (2014).....	1
<i>Marriage of Schnurman</i> , 178 Wn. App. 634, 316 P.3d 514 (2013), <i>rev. denied</i> , 180 Wn.2d 1010 (2014).....	1, 4
<i>Parentage of Jannot</i> , 149 Wn.2d 123, 65 P.3d 664 (2003)	2
<i>State on Behalf of Sigler v. Sigler</i> , 85 Wn. App. 329, 932 P.2d 710 (1997)	5
STATUTES	
RCW 26.19.001	3
RCW 26.19.011	1
RCW 26.19.035	1-2
RCW 26.19.075	1-3

I. CROSS-REPLY ARGUMENT

- A. This Court should reverse and vacate the trial court's 100% downward deviation from the standard calculation for child support because it is not supported by the evidence.**

The standard calculation applies when parents equally share residential time with the children. *Marriage of Schnurman*, 178 Wn. App. 634, 643, ¶ 23, 316 P.3d 514 (2013), *rev. denied*, 180 Wn.2d 1010 (2014). Even when the residential schedule is equal, the standard calculation is the “presumptive amount of child support owed” by the parent with the greater income to the other parent. *See* RCW 26.19.011(8); *In re A.L.*, 185 Wn. App. 225, 242, ¶ 38, 340 P.3d 260 (2014) (that one parent with an equal residential schedule has higher income is a “reasoned basis” to treat that parent as the obligor parent). If the trial court is asked to exercise its discretion and deviate from the standard calculation, it must make “written findings of fact supported by the evidence” that “shall include reasons for any deviation from the standard calculation and reasons for denial of a party’s request for deviation from the standard calculation.” RCW 26.19.035(2); *see also* RCW 26.19.075(3) (“The court shall enter findings that specify reasons for any deviation ... from the standard calculation made by the court”); *Schnurman*, 178 Wn. App. at 640, ¶ 14.

The trial court here was required to do more than “check the box” in the form child support order when it granted a deviation from the standard calculation and eliminated the transfer payment to the father from the mother, whose monthly net income was nearly double the income of the father. *Compare* Mandatory Form FL All Family 130 Child Support Order (at 5) *with* CP 44. This is particularly true here, when as a result of the deviation, the mother has no obligation to pay child support while the father is left entirely responsible for the children’s health care premiums. When findings of fact are required, as is the case for deviations in child support, the trial court cannot simply “check[] a box,” but must articulate its reasons for its decision. *See Parentage of Jannot*, 149 Wn.2d 123, 128, 65 P.3d 664 (2003) (addressing adequate cause determinations for parenting plan modifications).

Checking the box may have provided the trial court’s “reason” for granting a deviation – the residential schedule (CP 44) under RCW 26.19.075(1)(d). But checking the box did not provide the required “written findings of fact supported by the evidence” to support the trial court’s reason for granting a 100% downward deviation from the standard calculation. RCW 26.19.035(2); RCW 26.19.075(3). By merely reciting a reason under the statute to grant

a deviation – “the children in this case spend significant time with the parent who owes support. The non-standard amount still gives the other parent’s household enough money for the children’s basic needs” – the trial court did not fulfill its duty to make written findings to support its decision. *Compare* CP 44 with RCW 26.19.075(1)(d)(a court may deviate after consideration of “the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.”); RCW 26.19.075(3).

The trial court’s purported “finding” is not only insufficient to support a deviation, but it undermines the legislative intent behind child support. Child support is intended to not only meet the children’s “basic needs,” but to also “provide additional child support commensurate with the parents’ income, resources, and standard of living.” RCW 26.19.001. By deviating down from the standard calculation by 100%, leaving only enough money in the father’s household to meet “the children’s basic needs,” the trial court undermined the legislative intent of child support, and created

disparate standards of living between the children's home with their father and their home with their mother, whose household income is double that of the father.

Further, while the order states, "the facts that support the reasons checked above are detailed in the Worksheets, Part VIII, lines 20 through 26" (CP 44), there is nothing "detailed" in the worksheets to support a 100% downward deviation. (See CP 54-55) The only facts detailed in the worksheet is that the parents share equal residential time. (CP 55) However, a shared residential schedule alone is not a basis to grant a deviation. See *Schnurman*, 178 Wn. App. at 643, ¶ 23.

The mother argues that the "parties provided ample testimony over a year of trial about the children's expenses and the impacts on the respective households." (Cross-Response 2) However, nowhere does the mother cite to any portion of the record to support this assertion. Neither the trial court's purported "findings" nor the mother's brief points to any evidence presented to support a 100% downward deviation from the standard calculation, based on any alleged increased expenses in the mother's household or any alleged decreased expenses in the father's household. The lack of findings and evidence to support the trial court's downward deviation

requires reversal of the child support order, and vacation of the deviation. *State on Behalf of Sigler v. Sigler*, 85 Wn. App. 329, 338, 932 P.2d 710 (1997) (reversing deviation based on the purported amount of time the children spends with the father because “the court did not list any facts which indicate how much the father spends on the child when she is in his care which would justify the reduction in support. The court does fail to enter such findings, and gives no indications how the decrease was calculated.... Thus, the deviation fails for this reason”).

This Court should reverse, and direct the trial court on remand to vacate the downward deviation in the child support order, and enter a new order requiring the mother to make a transfer payment to the father, effective from the date of entry of its original child support order.

B. This Court should reverse the property division because it conflicts with the terms of the prenuptial agreement that the trial court found “valid and enforceable.”

1. The trial court erred in awarding a disproportionate share of the community property to the wife, instead of dividing the community estate as “equally as possible,” as required by the agreement.

The wife does not dispute that the prenuptial agreement, having been found valid and enforceable (CP 17), was binding on the

trial court. (See Cross-Response Br. 4) Instead, she argues that the trial court “retains the equitable right to award disproportionate amounts of the community property in a divorce.” (Cross-Response Br. 4) But the trial court’s discretion was limited by the prenuptial agreement, which required the trial court to “divide as equally as possible” the parties’ community estate. (Ex. 1 at 15) And as the wife acknowledges, the division of the community estate was “disproportionate.” (Cross-Response Br. 4) The trial court thus erred in dividing the community estate, which consisted entirely of real properties, 54% to the wife, and 46% to the husband, a difference of nearly \$100,000. (See chart at Cross-App. Br. 20, *citing* CP 17-18, 23, 26-27)

The trial court’s “rationale behind the division of the community estate in this case” (Cross-Response Br. 4) is irrelevant. The trial court was bound by the prenuptial agreement to divide the community estate “as equally as possible,” without consideration of the parties’ separate property. (Ex. 1 at 14, 15) The trial court could have easily effected the intent of the prenuptial agreement by increasing the amount of the judgment awarded to the husband to equalize the community property division. Alternatively, the trial court could have awarded the Fairwinds Loop investment property

to him, as he had requested, and offset the judgment owed by the wife to the husband in an amount to equalize the community property division. However, the trial court could not, as it did here, ignore the terms of the prenuptial agreement by awarding the wife a disproportionate share of the community estate.

2. The trial court erred in effectively awarding the wife the husband's separate property when the prenuptial agreement prohibited the award of any separate property of one party to the other.

The trial court also erred by effectively awarding separate property of the husband to the wife, which it could not do under the terms of the prenuptial agreement. (Ex. 1 at 14: "neither party is entitled to, nor will receive any award of or from the separate property and/or estate of the other") Specifically, the trial court erred by ordering a \$39,000 offset against the judgment owed by the wife to the husband, as it was premised on the trial court "reimbursing" the wife for her purported "share" of certain funds paid out from the husband's separate property account to his father. (See CP 20)

In defending the trial court's decision, the wife makes only one argument – her "contention that the account in question was not found at trial to be separate property subject to the protection of the prenuptial agreement." (Cross-Response Br. 4) However, this

“contention” is false, as evidenced by the trial court’s express written findings of fact.

The “account in question” was the Yakima Valley/Solarity Credit Union account no. 9159, which the trial court found was the husband’s separate property “pursuant to the Pre-Nuptial Agreement April 26, 1999.” (See CP 19, 24) Only those assets the trial court found were separate property were listed in the findings as being awarded to the owning party “pursuant to the Prenuptial Agreement April 26, 1999.” (Compare Ex. 1, Schedules A, B with CP 24-25, 27-28) By “reimbursing” the wife for her “share” of funds paid from the husband’s separate property account, the trial court violated the terms of the “valid and enforceable” prenuptial agreement that prohibited any award of separate property of one party to the other and prohibited consideration of the parties’ separate property in dividing the community estate. (Ex. 1 at 14)

This Court should reverse and remand with directions to the trial court to eliminate the \$39,000 “offset” to the judgment owed by the wife to the husband.

II. CONCLUSION

This Court should affirm on the wife's appeal, and reverse on the husband's cross-appeal. Specifically, this Court should reverse, and direct the trial court on remand to vacate the downward deviation in its child support order, and enter a new order requiring the mother to make a transfer payment to the father, effective from the date of entry of its original child support order. This Court should also reverse and remand with directions to the trial court to eliminate the \$39,000 "offset" to the judgment owed by the wife to the husband, and to divide the community estate as "equally as possible" by increasing the judgment owed by the wife to the husband, or by awarding the husband certain real property, with an offset to the judgment owed by the wife to the husband. With these exceptions, this Court should affirm.

Dated this 4th day of June, 2019.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on June 4, 2019, I arranged for service of the foregoing Reply Brief of Respondent/Cross-Appellant, to the court and to the parties to this action as follows:

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DATED at Seattle, Washington this 4th day of June, 2019.



Sarah N. Eaton

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