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Court of Appeals
Division II
State of Washington
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No. 54045-2-II

COURT OF APPEALS OF
THE STATE OF WASHINGTON
DIVISION TWO

LEWIS COUNTY SUPERIOR COURT NO. 04-3-00767-5

SCOTT T. SURMA

Appellant

v.

DANA K. SURMA

Appellee

APPELLEE'S BRIEF

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I. ARGUMENT

STANDARD OF REVIEW

The standard of review on appeals of postsecondary educational determinations is abuse of discretion and a court only abuses that discretion when its decision is based on untenable grounds or reasons. *Marriage of Newell*, 117 Wn.App. 711, 718, 72 P.3d 1130 (2003).

ISSUES

- A. Does the Superior Court have authority to consider payments for postsecondary support to an adult child when making a determination of postsecondary support for the parties' younger child?

The statute that concerns educational postsecondary support states the following:

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

RCW 26.19.090(2)

The plain language of the statute states that the court's decision on whether to award postsecondary educational support is not limited to the specific factors listed. The fact that the mother is paying for the older child's college expenses is an additional factor the judge can consider. It goes to what is equitable, whether the mother has the resources to pay for Hailey and what implied agreements the parties had.

Appellant's reference to *In re the Marriage of Jess*, 136 Wn.App. 922, 151 P.3d 240 (2007) is misplaced. That case concerned an existing postsecondary education order requiring the father to pay as long as certain conditions were met. *Id* at 927. The trial court considered whether the mother had paid her share of the expenses in deciding whether the father should be required which was inappropriate. *Id* at 929.

The case before this court does not concern an existing order. The trial court should be allowed to consider, as a factor, payments for another child when deciding whether to award postsecondary educational support.

B. Does a single printout suggesting a loan but without identifying information suffice for the findings of facts required of the court when making a determination of an award of postsecondary support?

The court will not second guess a trial court's discretionary evaluation of the factors. *In re Parentage of Goude*, 152 Wn.App. 784, 791, 219 P.3d 717 (2009). It is presumed that the court considered all evidence before it in fashioning an order on postsecondary educational expenses. *Marriage of Kelly*, 85 Wn.App. 785, 793, 934 P.2d 1218 (1997). There is no requirement that the trial court explicitly consider the factors of RCW 26.19.090 on the record. *Marriage of Morris*, 176 Wn.App. 893, 906, 309 P.3d 767 (2013).

The court, in its oral ruling, stated that she had noodled over this for several days since she read the materials and studied the statute. It is agreed that the court lacked authority to order the parties to pay for Zoey's education because she was 19 years of age and had graduated from college, but that does not mean that the court has to ignore that the mother was financially supporting Zoey in college while the father was not. The mother stated under oath that she paid for these expenses. This was an additional factor that the court considered presumably after considering the stated statutory factors.

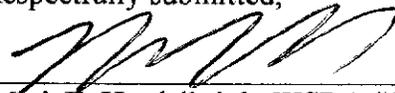
II. CONCLUSION

The court rightfully considered the fact that the mother was paying for the older child when deciding whether to award postsecondary

educational support. Based on this factor, as well as presumably all of the other evidence presented, did not award postsecondary support. This court should not second guess the trial courts discretionary determination.

DATED this 29th day of September 2020

Respectfully submitted,



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HURDELBRINK LAW OFFICES INC.

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