

**FILED**

JAN 11 2013

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

NO. 308316-III

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

---

IN RE THE MARRIAGE OF:

DEBRA R. GORE,  
Respondent

and

JOHN E. JONES,  
Appellant

---

REPLY BRIEF OF APPELLANT

---

Peter S. Lineberger  
Attorney for Appellant  
Bar No.: 24104  
900 North Maple, Suite 102  
Spokane, WA 99201  
509-624-6222

TABLE OF CONTENTS

	<u>Page</u>
I. ARGUMENT. ....	1
1. <u>Respondent’s Introduction</u> .....	1
2. <u>Respondent’s Statement of the Case</u> .....	3
3. <u>Respondent’s Argument On Issue No.1 - Income</u> .....	4
4. <u>Respondent’s Dealing With Issues 2 and 3 (Full-Time Compensation Must Be Imputed To Gore: The Trial Court Abused Its Discretion By Not Finding Jones to Be Employed Full-Time.</u> .....	10
5. <u>Issue No. 4: The Trial Court Miscalculated Jones Gross Monthly Income From ECI By a Mathematical Error.</u> .....	15
6. <u>Issue 5: Jones’s Itemization of Normal Business Expenses Should Have Been Accepted In The Absence Of Any Evidence To The Contrary And Not By Estimate</u> .....	16
7. <u>Final Observations</u> .....	17
8. <u>Respondent’s Attorney’s Fees Request</u> .....	18
II. CONCLUSION .....	19
Appendix 1 .....	21

TABLE OF AUTHORITIES

STATE CASES

*Andrus v. Department of Transportation*, 128 Wn.App. 895, 900, 117 P.3d 1152 (2005) ..... 18

*Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 808, 828 P.2d 549 (1992) ..... 2

*Eastwood v. Dept. of Labor & Industries*, 152 Wn.App. 652, 664, 219 P.3d 711 (2009) ..... 1, 3

*Ellensburg Cement Products, Inc., v. Kittitas County*, \_\_\_\_\_ Wn.App. \_\_\_\_\_, 287 P.3d (2012) ..... 2, 5

*Holland v. City of Tacoma*, 90 Wn.App. 533, 538, 954 P.2d 290 (1998) ..... 7

*Knudsen v. Washington State Executive Ethics Board*, 156 Wn.App. 852, 866, 235 P.3d 835 (2010) ..... 5

*Maples v. Maples*, 78 Wn.App. 696 703, 899 P.2d 1(1995) ..... 8

*In re the Matter of Marriage of Briscoe*, 82 Wn.App. 529, 535, 919 P.2d 84 (1996) ..... 9

*McCausland v. McCausland*, 129 Wn.App. 390, 410, 118 P.3d 944 (2005) ..... 15

*McCausland v. McCausland*, 159 Wn.2d 607, 152 P.3d 1013 (2007) ..... 15

*Nuss v. Nuss*, 65 Wn.App. 334, 343, 828 P.2d 627 (1992) ..... 6

<i>In re Marriage of Payne</i> , 82 Wn.App. 147, 916 P.2d 968 (1996) .....	17
<i>In re Marriage of Pollard</i> , 99 Wn.App. 48, 991P.2d 1201 (2000) ...	14
<i>State ex. Rel, Quick-Ruben v. Verharen</i> , 136 Wn.2d 888, 905 969 P.2d 64 (1998) .....	18
<i>State v. Marintorres</i> , 93 Wn.App. 442, 452, 969 P.2d 501 (1999) .....	7
<i>In re Marriage of Scanlon</i> , 109 Wn.App. 167, 175, 34 P.3d 877 (2001) .....	9
<i>Marriage of Stenshoel</i> , 72 Wn.App. 800, 803-804, 866 P.2d 635 (1993) .....	7
<i>Watts v. United States</i> , 703 F.2d 353 (9 <sup>th</sup> Cir. 1983) .....	1
<i>West v. Thurston County</i> , 168 Wn.App. 162, 187, 275 P.3d 1200 (2012) .....	7
<i>In re Marriage of Wright</i> , 78 Wn.App. 230, 234, 896 P.2d 735 (1995) .....	12

STATE STATUTES

RCW 25.09.070(3) .....	15
RCW 26.19.020 .....	15
RCW 26.19.071(1) .....	8
RCW 26.19.071(3) .....	5, 8
RCW 26.09.071(3)(d)(f) .....	4, 6, 7
RCW 26.19.071(5)(c) .....	6

RCW 26.19.071(6) ..... 4, 14

OTHER AUTHORITIES

Morgan, Laura, *Child Support Guidelines: Interpretation  
and Application* ..... 9

I. ARGUMENT

1. Respondent's Introduction

In the first paragraph at the top of page 3, respondent makes comments which are both irrelevant and not proven. The reference to CP 393 is a reference to respondent's counsel's unsworn "Memorandum of Petitioner in Support of Modification of Child Support" appearing at CP 393 - 402, and is, by definition, argument and not evidence. Additionally, the assertion is contradicted by Jones's declaration at CP 145 - 146.

We note at this time that this Court should be cautioned about references to the above-mentioned Memorandum of Petitioner by her counsel. It is repeatedly referred to in the Brief of Respondent, and should not be considered as evidence in the record. A memorandum by counsel is self-serving and consists of an argument, not evidence. *Watts v. United States*, 703 F.2d 346, 353 (9<sup>th</sup> Cir. 1983); *cf. Eastwood v. Dept. of Labor & Industries*, 152 Wn.App. 652, 664, 219 P.3d 711 (2009).

At the top of page 4, it is asserted that "Dr. Gore works 35 - 40 hours per week. CP 394." This distortion of the record is repeated numerous times throughout the Brief of Respondent and it is extremely misleading on important issues in the case. First of all, Dr. Gore stated in

her principal declaration in support of her motion for child support modification that she works 135 hours per month. CP 45, at lines 24 and 25. This calculates to 31.2 hours per week, not 35 to 40 hours. She later escalated her statement just before the trial court hearing, to the 35 - 40 hour claim with no proof or explanation. See *infra*, page 11.

In addition, the trial court did not make such a finding. The trial court found that the petitioner works 0.7 FTE as discussed in our opening Brief of Appellant, and as found by the trial court at RP0R2 (“ . . . the mother’s information provided the mother is employed at seventy percent . . . .”). If Gore felt that the trial court’s finding on this point was incorrect, she could have cross-appealed this issue. As it is, unchallenged findings of fact are verities on appeal. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 808, 828 P.2d 549 (1992); *Ellensburg Cement Products, Inc., v. Kittitas County*, \_\_\_\_ Wn.App. \_\_\_\_, 287 P.3d 718 (2012).

Therefore, in the nature of a continuing objection, appellant Jones requests the Court to disregard all of the references in the Brief of Appellant to the allegation that Dr. Gore works 35 to 40 hours per week.

Above the middle of page 4 of her Brief, Gore makes allegations about Dr. Jones’s income, but again this is referenced only to the same

Memorandum of counsel at CP 394, which is not evidence. *Eastwood, supra*. Throughout that paragraph, references to CP 394 are insufficient to form a basis of review in this case.

At the bottom of page 4, Gore represents as fact that Dr. Jones receives over \$30,000.00 per year in benefits in the form of payments for malpractice insurance. Not only is this taken from CP 394, but it is contradicted by Jones himself with the correct explanation at CP 147. The \$30,591.00 was a one-time payment for malpractice insurance *tail* coverage, which was referred to in Jones's contract and was pointed out to the trial court. Therefore, she did not include it. See, CP 124, second paragraph, a portion of Jones's Physician Partnership Agreement.

## 2. Respondent's Statement of the Case

Gore's statement of the case appears on page 5, *amended*, of her Brief. The first sentence again is not supported by the record, but only by the argument of counsel in his opinion; his reference to CP 397 is of no avail.

Perhaps more significantly with respect to this brief statement of the case, it is all argument. The statement of the case is governed by RAP 10.3(a)(5), which states:

*“Statement of the Case.* A fair statement of the facts and procedure relevant to the issues presented for review, *without argument.* Reference to the record must be included for each factual statement.” (Emphasis supplied).

Therefore, Jones will not address the argument in the statement of the case.

3. Respondent’s Argument On Issue No. I - Income

In the first paragraph on page 6, Gore makes the bald assertion that the (trial) court in this case applied the statute and case law to the facts before it. There is no reference to the record and no explanation. In fact, as shown in the Brief of Appellant, the trial court did not apply the statute with respect to income, RCW 26.19.071(3)(d) and (f). Section IV.B.1. of Brief of Appellant, nor with respect to imputation of income, RCW 26.19.071(6), Section IV.B.2.

Running from pages 7 through the top of page 12 of the Brief of Respondent, Gore attempts to address Jones’s issue number 1 (A Child Support Court Must Include All Employer-Paid Employee Benefits In The Employee’s Gross Income). Gore’s argument on this point is odd because she barely touches on the statute itself which is obviously the controlling factor here. Instead, she takes a sojourn into the definition of “income”

according to her opinion and according to dictionaries, both printed and on line. However, there is no need to resort to dictionaries when a term is defined in the statute itself. The plain meaning of the statute controls over other definitions. The plain meaning of an unambiguous statute controls. *Ellensburg Cement Products, Inc. v. Kittitas County, supra*, 287 P.3d 718 at 723. See Appendix 1.

The “actual income” argument of Gore is not supported by any citation to any authority, and appellate courts decline to consider arguments when there is no citation to authority to support them. *Knudsen v. Washington State Executive Ethics Board*, 156 Wn.App. 852, 866, 235 P.3d 835 (2010).

Gore even goes so far as to state, again without citation to authority, that no court has ever included the employer’s contribution to employee benefits to increase the employee’s income. Brief of Appellant page 8, second paragraph, first sentence.

As we fully developed in the Brief of Appellant, the text of RCW 26.19.071(3) is controlling. We attach a copy of that complete statute to this Brief as Appendix 1. We will first address **deferred compensation**, which Gore surprisingly argues is not included in income. In the first place,

it is explicitly denominated as an income source included in gross monthly income in RCW 26.19.071(3)(d). For a further court definition of deferred compensation, see *Nuss v. Nuss*, 65 Wn.App. 334, 343, 828 P.2d 627 (1992), where, in discussing property issues in a divorce, the court observed that:

“. . . [R]etirement benefits are considered deferred compensation for past services. . .”

It would be difficult to find a more plain definition. In addition, under the child support mandatory guidelines, in discussing allowable deductions from gross income, certain allowances are permitted such as federal and state income tax and federal insurance contributions act deductions. *Mandatory* pension plan payments are deductible. There is no evidence that Gore’s pension plan payments are mandatory; thus they are discretionary and they are included in her income. See RCW 26.19.071(5)(c). Appendix 1.

Gore also argues that retirement contributions are different than employer paid benefits or “perks” because the employee becomes the owner of these retirement funds. Without any citation to authority, and in the face of the statement in *Nuss, supra*, this makes no sense. The same argument

is repeated on page 10 of her brief, but Gore cites to absolutely no authority for her assertion that the employee has to have present control over income for it to be considered for child support purposes. As stated in *West v. Thurston County*, 168 Wn.App. 162, 187, 275 P.3d 1200 (2012):

“ . . .

‘[P]assing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration.’ *Holland v. City of Tacoma*, 90 Wn.App. 533, 538, 954 P.2d 290 (1998). We do not consider conclusory arguments that do not cite authority. See, RAP 10.3(a)(6), 10.4; *State v. Marintorres*, 93 Wn.App. 442, 452, 969 P.2d 501 (1999). In making bald assertions lacking cited factual and legal support, [the appellant] has failed to present developed argument for our consideration on appeal; accordingly, we do not address his . . . challenge.”

In fact as pointed out in the discussion of the facts, the compensation detail provided by Gore’s employer, CP 70 - 71 (Sealed), sets forth explicitly what is her compensation. It is within the the scope of the statute by plain language reading.

With respect to RCW 26.19.071(3)(f), **contract-related benefits**, case authority in Washington most explicitly supports inclusion of Gore’s contract-related benefits. In *Marriage of Stenshoel*, 72 Wn.App. 800, 803 - 804, 866 P.2d 635 (1993), our Court of Appeals was considering the issue

of whether it should treat *property settlement between the parties payments* as income in calculating child support as contract-related payments. The court held that it should not, but stated the following:

“RCW 26.19.071(1) provides that all income and resources of each parent’s household shall be considered by the court in determining each parent’s support obligation. RCW 26.19.071(3) provides that ‘monthly gross income shall include income from any source,’ including among other items listed, ‘contract-related benefits’. Because the term ‘contract-related benefits’ is not statutorily defined, it is ‘presumed that it is to be accorded its ordinary meaning.’ [citation omitted]”

Because Gore’s contract explicitly refers to fringe benefits and insurance payments on her behalf as part of her compensation, CP 244 (Sealed), paragraph 4 and paragraph 5 “Benefits” and “Insurance,” respectively, there can be no denial that these are income to Dr. Gore for purposes of the calculation of child support. (“4.1 Practitioner [Gore] will be entitled to the fringe benefits that GHP offers to Shareholder Staff . . .”; “5.1 GHP shall make available to Practitioner all general liability, professional liability and errors and omissions insurance coverage that it affords to GHP employees in good standing . . .”).

A reasonable analogy can be drawn from a 1995 Washington case to deflate Gore’s argument that income is only cash in the pocket of the

employee; *see, Maples v. Maples*, 78 Wn.App. 696, 703, 899 P.2d 1 (1995), *followed but not extended in In re Matter of Marriage of Briscoe*, 82 Wn.App. 529, 535, 919 P.2d 84 (1996). In that case, the Court of Appeals held that disability payments made directly to a father's children *were income to him* for child support purposes.

And *see, In re Marriage of Scanlon*, 109 Wn.App. 167, 175, 34 P.3d 877, (2001) where it is held that if health insurance is paid by a parent it may be credited against the child support obligation; however, if health insurance is paid by the employer, it may not be credited against the child support obligation. At 109 Wn.App. 175, the court stated:

“A parent who pays for health insurance is allotted credit against his or her basic support obligation equal to the cost of the insurance. This credit may not include any premiums paid by the parent's employer, other third party, or any portion of premium not covering the children at issue.”

All these cases belie the assertions made by Gore. In addition, general law throughout the fifty United States does not support Gore's position. As summarized by Laura Morgan, a leading national legal expert on child support, in her book *Child Support Guidelines: Interpretation and Application*, it is stated in Section 4.7 “the various guidelines [of different states] generally provide that expenses paid by an employer, such as use of

the company car, free housing and reimbursed meals, are includable as income where such perks reduce personal living expenses. Further, in-kind income, such as forgiveness of a debt and the use of property at less than the customary charge, constitutes income.”

In subsection [1] of that paragraph it states:

“Noncash prerequisites and reimbursements provided by an employer for personal expenses constitute income where such perks and reimbursements are regularly received. Such perks and reimbursements include use of the company car and payment by the employer of employee living expenses. *Perks are considered ‘income’ because the payment of these living expenses by an employer frees up other salary and income for the payment of support. . . .*” (Emphasis supplied).

The payment by Group Health Permanente, on behalf of Dr. Gore, for all of the items listed in our Brief, section IV.B.1. should be counted as income to Dr. Gore, resulting in her total compensation package as shown on CP 70 and 71 as \$183,614.75. These payments by Group Health Permanente free up Gore’s salary income for use in support of her children.

4. Respondent’s Dealing With Issues 2 and 3 (Full-Time Compensation Must Be Imputed to Gore; The Trial Court Abused its Discretion By Not Finding Jones To Be Employed Full-Time).

From page 12 to the middle of page 16 of the Brief of Respondent,

Gore obfuscates the issues before this Court through further misreading of the legal authorities.

Gore begins by claiming that her work schedule entailed 35 to 40 hours per week. Although she said this in her last reply declaration before a hearing, at CP 199, she had raised this number considerably from the declaration she filed on November 8, 2011 appearing at CP 45 (approximately 31 hours per week). The fluidity of her written testimony is, itself testimony to her willingness to increase the “bidding” about child support just prior to the hearing. For example, she states in that same last reply declaration that Dr. Jones’s gross income should be calculated at \$550,000.00. CP 202, line 22. To that she adds that Dr. Jones receives an estimated \$50,000.00 in work-related benefits. *Id.* at lines 24 and 25. These claims are so spectacularly inflated that they cannot withstand even slight scrutiny. Dr. Jones submits that the same type of exaggerated application was made to her claims about work hours. In any case, she included in her “work hours” times when she was on-call, which clearly are not necessarily hours working at all but simply require a physician to remain available by telephone and to attend to illnesses if necessary on an occasional basis.

The reason for the rather confusing argument by respondent is that we have asserted that the trial court abused its discretion in connection with its failure to impute income to the respondent. In part of this decision, as appears in the short report of proceedings of the court's oral ruling (RPOR) the commissioner noted that Dr. Jones was, temporarily at that time, working reduced hours at Deaconess Hospital. The court, while acknowledging the existence of his extra job at the Colville Memorial Hospital, took no account of the hours he testified to that he expends not only working at the hospital, but also traveling to and from the hospital, having meals, and the like, all at his own time and expense.

The plain fact is that, as testified to by Dr. Jones, CP 137 - 138, as demonstrated by documents he submitted to the trial court (CP 131, 128, 122, and 224), and as emphasized in the Brief of Appellant, full-time employment does not necessarily mandate a 40 hour week. *In re Marriage of Wright*, 78 Wn.App. 230, 234, 896 P.2d 735 (1995), Brief of Appellant, Pages 7, 8, 18, and 20.

At the bottom of page 12 and the top of page 13 Gore claims that the trial court found Dr. Jones worked only 86 hours for the entire month of January 2011. This is inaccurate. She was referring to 2012, and she was

referring only to his hours at Deaconess Hospital, again omitting any fair reference to the hours Dr. Jones works at Colville Medical Center and spends on ancillary activities such as travel. In the middle of page 13 of Gore's Brief, there is an allegation about the intensity of Dr. Jones's work as an emergency room physician. This is taken from the declaration of Gore, CP 202, and it is flatly contradicted by the declaration of Jones at CP 149. At CP 149, Dr. Jones refers to the fact that he treats heart attacks, strokes, and stab wounds. If this is not the work of an emergency room doctor, we do not know what is. This argument must be disregarded.

By contract, as admitted by Gore, CP 45, her employment is FTE 0.7. There is no comparison between the two positions, and the trial court abused its discretion by deciding to treat the parties as if they were on equal footing in their employments. All of this matters in respect to Jones's assertion that the trial court should have imputed income to Gore to full-time as discussed in the Brief of Appellant, pages 16 to 19. See, also, Brief pages 19 to 21.

Contrary to the trial court's comments at RPOR 4 and CP 411, the trial court did not need to indulge in any mind-boggling calculations to arrive at the parties' actual income. The evidence was before her in

connection with Jone's compensation, Gore's compensation, and Gore's voluntary under-employment.

Gore asserts that the court could find her voluntarily under-employed because it did not make a finding that she was under-employed "for the purposes of avoiding child support obligations." RCW 26.19.071(6). However, in this Court's decision in *In re Marriage of Pollard*, 99 Wn.App. 48, 991 P.2d 1201 (2000), the Court found that the obligee, Ms. Brookins, had an intention not to work so she could stay at home with her young child, and she claimed that being a stay-at-home mother to young children was gainful employment. After rejecting the claim of gainful employment, 99 Wn.App. At 53, this Court reversed the trial court's finding that the mother was not voluntarily under-employed with an intent to avoid child support. This Court stated at *id.*:

" . . . Pursuant to RCW 26.19.071(6), however, an under-employed parent may not escape imputation of income because he or she is *gainfully employed* on a full-time basis and is not under-employed to reduce the support obligation. Because Ms. Brookins's full-time work is work as a mother and homemaker is not 'gainful,' she does not come within the provision of RCW 26.19.071(6)." (Emphasis in original) (footnote omitted).

This Court further held at page 54:

“Clearly Ms. Brookins’s choice to leave the military and her former salary of over \$22,000.00 per year . . . was voluntary, motivated by her desire to raise the two young children of her new family. [Citation omitted] While laudable, these actions cannot adversely affect her obligation to the two older children she had with Mr. Pollard.”

Thus, the court ordered that Ms. Brookins be required to pay support based upon her former earnings in the military. *Id.*

At the bottom of page 15, Gore seems to think that because the parties reached an accommodation in their original divorce regarding child support, that this would be binding upon Jones now. However, it is Dr. Gore who filed for a modification of the original child support order, and she cannot complain that Jones has asserted his legal rights under those circumstances. In any event, agreements of parties regarding child support are not binding on any trial court. RCW 25.09.070(3); RCW 26.19.020; *McCausland v. McCausland*, 129 Wn.App. 390, 410, 118 P.3d 944 (2005), *reversed on other grounds*, *McCausland v. McCausland*, 159 Wn.2d 607, 152 P.3d 1013 (2007).

On page 16 Gore relies heavily on the unsworn Memorandum of Counsel, and these arguments should be disregarded.

5. Issue No. 4: The Trial Court Miscalculated Jones’s Gross Monthly Income From ECI By a Mathematical Error

Gore's one-paragraph attempt to refute Jones's claim about the mathematical error would seem to indicate that Gore did not read the exhibit referred to in the Brief of Appellant. At CP 228, there appears the sealed financial source document coversheet submitted by Dr. Jones. There are five numbered paragraphs listing the items filed. Item 1 states: "11-30-2011 pay stub of ECI, LLP, Partner Account, pay stub *"covering the months of December 20, 2010 through November 20, 2011, one year's pay from primary employer."* (Emphasis supplied). Two pages later at CP 230 appears the document in question. It states right at the top "12 months December 2010 - November 2011."

This fact was pointed out to the trial court and has been in the possession of Gore ever since these documents are filed a year ago. All Jones is asking is that the gross income from his employment with ECI be calculated correctly. For some reason, the trial court ignored that plain evidence and refused to grant the motion for reconsideration. Jones respectfully requests the Court to correct the error.

6. Issue 5: Jones's Itemization of Normal Business Expenses Should Have Been Accepted In the Absence Of Any Evidence To The Contrary And Not By Estimate

Here, Gore makes a truly specious argument by attempting to refer

back to earlier tax returns based upon Jones's income which was no longer operative at the time of trial. The error is compounded by the fact that in 2009, Jones was a shareholder in a professional corporation which paid all of his expenses. Thus he had no out-of-pocket business expenses. CP 73, *et seq.* In 2010, that corporation ceased to operate in March, and Jones began working for ECI as an independent contractor shortly thereafter, CP 122, accumulating business expenses in the neighborhood of \$7,000.00 for a partial year. CP 92, *et seq.* For Gore to argue that the trial court was relying on the earlier years, which she obviously was not, and to somehow claim that Jones's inclusion of his business expenses was a "fraud upon the court" is truly shocking.

Jones requests the court on this point to disregard the entire argument of Gore and to grant the relief requested. The trial court had no evidence before it upon which to base her "estimate" of \$800.00 in business expenses. *See, In re Marriage of Payne*, 82 Wn.App. 147, 916 P.2d 968 (1996).

#### 7. Final Observations

The brief of respondent is marred with exaggerated, offensive, and truculent commentary in the form of perjorative adjectives and baseless

accusations. Jones's actions and arguments are variously and frequently referred to as "absurd" and "frivolous," and Gore even goes so far as to accuse Dr. Jones of fraud and bad faith.

These comments by Gore have no place in a brief to the Court of Appeals. Dr. Jones respectfully requests the Court to ignore and disregard these intemperate remarks, and recognize that they are not supported by anything in the record of this case, and are inappropriate.

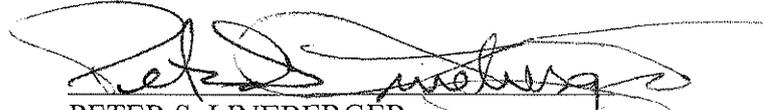
8. Respondent's Attorney's Fees Request

Both parties have the ability to pay their own attorney's fees. *Eg.*, CP 254, which, although, inaccurate, gives the Court a sense of the gross earnings of each party. As for Gore's claim that this is a frivolous appeal, this is obviously without merit. Sanctions for a frivolous appeal are dealt with in RAP 18.9(a). "An appeal is frivolous under RAP 18.9 if it raises no debatable issues and is so devoid of merit that there is no reasonable possibility of reversal." *State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 905, 969 P.2d 64 (1998); *Andrus v. Department of Transportation*, 128 Wn.App. 895, 900, 117 P.3d 1152 (2005). All of the issues raised by Dr. Jones are debatable, and, in fact, correct. There is no basis for an award of attorney's fees in this case.

II. CONCLUSION

Dr. Jones reiterates his request for relief in his Conclusion at pages 23 and 24 of the Brief of Appellant, to the effect that we request this Court to reverse the trial court decision and remand with instructions to enter new child support worksheets which contain the correct figures as outlined in the Brief of Appellant, and for the remaining relief enumerated therein.

Respectfully submitted this 11th day of January, 2013.

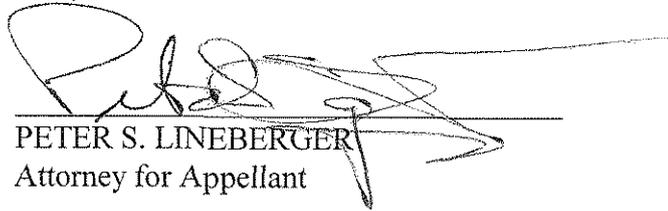


PETER S. LINEBERGER  
Attorney for Appellant  
Bar No.: 24104

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of January, 2013, a true and correct copy of a Reply Brief of Appellant, in the above-entitled matter was delivered via personal delivery in the City of Spokane, to the following:

Spencer W. Harrington  
Attorney at Law  
1517 W. Broadway Avenue  
Spokane, WA 99201



PETER S. LINEBERGER  
Attorney for Appellant

APPENDIX 1  
RCW 16.19.071

## **26.19.071. Standards for determination of income**

(1) **Consideration of all income.** All income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent. Only the income of the parents of the children whose support is at issue shall be calculated for purposes of calculating the basic support obligation. Income and resources of any other person shall not be included in calculating the basic support obligation.

(2) **Verification of income.** Tax returns for the preceding two years and current paystubs shall be provided to verify income and deductions. Other sufficient verification shall be required for income and deductions which do not appear on tax returns or paystubs.

(3) **Income sources included in gross monthly income.** Except as specifically excluded in subsection (4) of this section, monthly gross income shall include income from any source, including:

- (a) Salaries;
- (b) Wages;
- (c) Commissions;
- (d) Deferred compensation;
- (e) Overtime, except as excluded for income in subsection (4) (i) of this section;
- (f) Contract-related benefits;
- (g) Income from second jobs, except as excluded for income in subsection (4) (i) of this section;
- (h) Dividends;
- (i) Interest;
- (j) Trust income;
- (k) Severance pay;
- (l) Annuities;
- (m) Capital gains;
- (n) Pension retirement benefits;
- (o) Workers' compensation;
- (p) Unemployment benefits;
- (q) Maintenance actually received;
- (r) Bonuses;
- (s) Social security benefits;
- (t) Disability insurance benefits; and
- (u) Income from self-employment, rent, royalties, contracts, proprietorship of a business, or joint ownership of a partnership or closely held corporation.

(4) **Income sources excluded from gross monthly income.** The following income and resources shall be disclosed but shall not be included in gross income:

(a) Income of a new spouse or new domestic partner or income of other adults in the household;

(b) Child support received from other relationships;

(c) Gifts and prizes;

(d) Temporary assistance for needy families;

(e) Supplemental security income;

(f) Aged, blind, or disabled assistance benefits;

(g) Pregnant women assistance benefits;

(h) Food stamps; and

(i) Overtime or income from second jobs beyond forty hours per week averaged over a twelve-month period worked to provide for a current family's needs, to retire past relationship debts, or to retire child support debt, when the court finds the income will cease when the party has paid off his or her debts.

Receipt of income and resources from temporary assistance for needy families, supplemental security income, aged, blind, or disabled assistance benefits, and food stamps shall not be a reason to deviate from the standard calculation.

(5) **Determination of net income.** The following expenses shall be disclosed and deducted from gross monthly income to calculate net monthly income:

(a) Federal and state income taxes;

(b) Federal insurance contributions act deductions;

(c) Mandatory pension plan payments;

(d) Mandatory union or professional dues;

(e) State industrial insurance premiums;

(f) Court-ordered maintenance to the extent actually paid;

(g) Up to five thousand dollars per year in voluntary retirement contributions actually made if the contributions show a pattern of contributions during the one-year period preceding the action establishing the child support order unless there is a determination that the contributions were made for the purpose of reducing child support; and

(h) Normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about which there is disagreement.

Items deducted from gross income under this subsection shall not be a reason to deviate from the standard calculation.

(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. Income shall not be imputed to a parent to the extent the parent is unemployed or significantly underemployed due to the parent's efforts to comply with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child. In the absence of records of a parent's actual earnings, the court shall impute a parent's income in the following order of priority:

- (a) Full-time earnings at the current rate of pay;
- (b) Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data;
- (c) Full-time earnings at a past rate of pay where information is incomplete or sporadic;
- (d) Full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, is recently coming off public assistance, aged, blind, or disabled assistance benefits, pregnant women assistance benefits, essential needs and housing support, supplemental security income, or disability, has recently been released from incarceration, or is a high school student;
- (e) Median net monthly income of year-round full-time workers as derived from the United States bureau of census, current population reports, or such replacement report as published by the bureau of census.

#### CREDIT(S)

[2011 1st sp.s. c 36 § 14, eff. June 15, 2011; 2010 1st sp.s. c 8 § 14, eff. March 29, 2010; 2009 c 84 § 3, eff. Oct. 1, 2009; 2008 c 6 § 1038, eff. June 12, 2008; 1997 c 59 § 4; 1993 c 358 § 4; 1991 sp.s. c 28 § 5.]

West's RCWA 26.19.071, WA ST 26.19.071

Current with all 2012 Legislation and Initiative Measures 502, 1185, 1240

(C) 2012 Thomson Reuters.