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

Court of Appeals No. 310256  
Benton County Superior Court Cause No. 10-3-00273-2

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WASHINGTON STATE COURT OF APPEALS  
DIVISION III

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BRANDON MUNN,

*Respondent,*

vs.

AMANDA MUNN,

*Appellant.*

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**BRIEF OF RESPONDENT**

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES.....iii

I. INTRODUCTION.....1

II. STATEMENT OF THE CASE.....1

    A. Substantive History.....1

    B. Procedural History.....1

III. ARGUMENT.....2

    A. Standard of Review.....2

    B. The Record Contains Substantial Evidence  
    In Support Of The Trial Court’s Denial Of Back Child  
    Support.....3

IV. CONCLUSION.....7

**TABLE OF AUTHORITIES**

**TABLE OF CASES**

*Bering v. Share,*  
106 Wn.2d 212, 220, 721 P.2d 918 (1986)..... 2

*In re Marriage of Stern,*  
57 Wn. App. 707, 717, 789 P.2d 807 (1990)..... 2

*In re Snyder’s Welfare,*  
85 Wn.2d 182, 185-86, 532 P.2d 278 (1975)..... 3

*State ex rel. J.V.G. v. Van Guilder,*  
137 Wn. App. 417, 423, 154 P.3d 243 (2007)..... 2

**STATUTES**

RCW 26.19.035 ..... 3

## I. INTRODUCTION

COMES NOW, the Respondent, Brandon Munn (“Mr. Munn”), and hereby files this Brief of Respondent.

## II. STATEMENT OF THE CASE

### A. Substantive History

Brandon Munn, the Respondent herein, and Amanda Munn (“Ms. Munn”), the Appellant herein, were married on May 18, 1993, in Victor, Idaho. CP 17: 12.<sup>1</sup> The parties separated on March 16, 2010. CP 17: 14.

At the time of trial, Mr. and Ms. Munn had five (5) children: Mackenzie, age eighteen (18); McKayla, age fifteen (15); McKell, age eleven (11); Garrett, age nine (9); and Charlie, age seven (7). CP 18:21-25.

### B. Procedural History

Mr. Munn filed a Petition for Dissolution on or about March 16, 2010. *See* CP 17: 25. A trial was held April 23, 2012, lasting approximately four (4) days. CP 16: 16. The Honorable Vic VanderSchoor presided.

At trial, the Court was asked to establish a permanent parenting plan, enter a final order of child support, and provide an equitable distribution of the parties’ assets and liabilities. *See* CP 27-28. At trial, Ms.

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<sup>1</sup> CP 17: 12 refers to Clerk’s Papers, page 17, line 12.

Munn requested back child support. No temporary order of child support was entered during the pendency of the dissolution action.

The Trial Court denied Ms. Munn's request for back child support. *See* CP 41: 14-15; RP *Excerpt of Court's Decision 2*: 1. The Trial Court held that no back child support was due and owing Ms. Munn. CP 41: 14-15. No further explanation was provided by the Court in support of its finding. *See* CP 41.

Ms. Munn subsequently sought an appeal of the Trial Court's finding.

### III. ARGUMENT

#### A. Standard of Review

A trial court's child support determination is reviewed for an abuse of discretion. *See State ex rel. J.V.G. v. Van Guilder*, 137 Wn. App. 417, 423, 154 P.3d 243 (2007). A trial court abuses its discretion by making a decision based on untenable grounds or for untenable reasons. *Id.* A trial court does not abuse its discretion where the record shows that it considered all the relevant factors and the child support award is not unreasonable under the circumstances. *Id.* Findings of fact supported by substantial evidence will not be disturbed on appeal. *See In re Marriage of Stern*, 57 Wn. App. 707, 717, 789 P.2d 807 (1990) (citing *Bering v. Share*, 106 Wn.2d 212, 220, 721 P.2d 918 (1986)). Substantial evidence exists if

the record contains evidence of “sufficient quantum to persuade a fair-minded, rational person of the truth of a declared premise.” *Id.* (citing *In re Snyder*, 85 Wn.2d 182, 185-86, 532 P.2d 278 (1975)).

Here, the Trial Court’s denial of back child support is supported by substantial evidence in the record.

B. The Record Contains Substantial Evidence In Support Of The Trial Court’s Denial Of Back Child Support.

Washington statute requires a Trial Court to enter written findings of fact, supported by the evidence in the record, upon which an Order of Child Support is based. *See* RCW 26.19.035(2). Here, the Trial Court denied Ms. Munn’s request for back child support, holding “[no] back child support is owed at this time.” CP 43. Though this factual finding is brief, there is substantial evidence in the record supporting the Trial Court’s finding. Thus, the Trial Court’s denial of back child support should be affirmed.

During the pendency of the dissolution action, the parties had five children in common. RP *Brandon Munn’s Testimony* 38: 8-11. Commencing October, 2010, the parties’ oldest child, Mackenzie, lived primarily with Mr. Munn. RP *Brandon Munn’s Testimony* 38: 12-15. While the other children, with the exception of the parties’ daughter, McKayla, spent a significant amount of time with Mr. Munn during the pendency of the dissolution proceeding. RP *Brandon Munn’s Testimony*

38: 24-25; 39: 1-2. Specifically, the younger children resided with Mr. Munn every other weekend from Thursday until Monday. RP *Brandon Munn's Testimony* 38: 24-25; 39: 1-2. Between the food expenses for himself and the children as well as other child related expenses, Mr. Munn spent approximately \$1,186.00 per month. *See* Ex 8.

Ms. Munn suggests that the absence of a temporary order of child support resulted in a lack of financial support from Mr. Munn; however, the record supports a drastically different premise.

Despite the absence of a temporary order of child support, Mr. Munn indirectly provided support to Ms. Munn on a monthly basis by way of health care insurance, mortgage payments, and auto insurance. In addition to the expenses incurred by Mr. Munn merely by way of exercising visitation with his children, Mr. Munn paid for the children's health care insurance and Ms. Munn's health care insurance during the pendency of the dissolution proceeding. RP *Brandon Munn's Testimony* 40: 25; 41: 1-2. The cost of medical insurance for Mr. Munn, Ms. Munn, and the parties' three children was approximately \$843.77 per month. RP *Brandon Munn's Testimony* 41: 11-14. The cost of medical insurance for Mr. Munn, alone, would have only amounted to approximately \$264.89. *See* Ex 9. Mr. Munn also provided vision and dental insurance for Ms. Munn and the children. RP *Brandon Munn's Testimony* 41: 15-17. The

cost of vision and dental insurance increased the monthly health insurance payment to approximately \$965.00. RP *Brandon Munn's Testimony* 41: 22-25; 42: 1.

In addition to providing health care insurance for Ms. Munn and all of the children, Mr. Munn testified to making the house payment for Ms. Munn's home from March of 2010 until March of 2011. RP *Brandon Munn's Testimony* 55: 13-16. At the time of trial, the monthly house payment was approximately \$3,681.00. RP *Amanda Munn's Testimony* 99: 3-14. Mr. Munn also paid Ms. Munn's auto insurance for a period of time during the pendency of the dissolution proceeding. *Id.* All of these payments were made in the absence of a temporary order of child support and in the absence of a temporary order of spousal maintenance.

Though the absence of a temporary order of child support may be undisputed, the record contains substantial evidence of payments made on behalf of, and indirectly to, Ms. Munn for the support of the parties' children as well as Ms. Munn. These payments were undisputed at trial. Moreover, the absence of a temporary order of child support was the result of Ms. Munn's failure to pursue such an order. In fact, the issue of child support was brought before the court on more than one occasion during the pendency of the dissolution proceeding, yet no order was ever entered obligating Mr. Munn to pay child support or spousal maintenance. RP

*Brandon Munn's Testimony* 42: 15-22. Ms. Munn failed to pursue any formal orders regarding Mr. Munn's child support obligation because she was already receiving a substantial amount of financial support from Mr. Munn.

Even at trial, Ms. Munn failed to specifically request back child support. She merely testified to the fact that child support was not paid. She did not dispute the other payments made on her or her children's behalf by Mr. Munn. In all reality, the request for back child support was a mere afterthought, likely mentioned briefly during closing remarks at trial. Moreover, when the Order of Child Support was filed following trial, which states, "No back child support is owed at this time," the Order was signed by Ms. Munn's attorney without objection to the inclusion of such language.

Furthermore, Ms. Munn's reliance on the gross income of Mr. Munn's business prior to 2010 as a counterargument to any equitable defense(s) available to Mr. Munn is misleading. Prior to August of 2010, Mr. Munn worked for his family's business, which consisted of multiple entities performing farming operations as well as trucking operations. *See RP Brandon Munn's Testimony* 5-9. Munn Ag Services, LLC was one of many entities operating under the family business umbrella. *See RP Brandon Munn's Testimony* 5-9. In 2010, Mr. Munn sold his interest in the

larger family business, and by August of 2010, he was operating Munn Ag Services, LLC as a standalone business, without the financial support and reputation of the family business. *See RP Brandon Munn's Testimony* 14-20. As a standalone business, Munn Ag Services suffered a small loss in 2010 and a loss of over \$250,000.00 in 2011. *See RP Sandra Gamble's Testimony* 5-7; Ex 4; Ex 5. Despite the the financial condition of Mr. Munn's business, Mr. Munn continued to provide financial support for and on behalf of Ms. Munn and the children during the pendency of the dissolution proceeding.

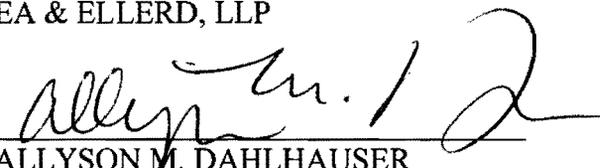
The Trial Court's refusal to order back child support is supported by substantial evidence in the record, and should be upheld.

#### IV. CONCLUSION

For the foregoing reasons, the judgment on appeal should be affirmed.

SUBMITTED THIS 6<sup>th</sup> day of November, 2013.

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