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**COURT OF APPEALS FOR DIVISION III  
OF THE STATE OF WASHINGTON**

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

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IN RE THE MARRIAGE OF:

SHEILA ANN WILDER,  
Respondent,

And

FRANCIS GREGORY WILDER  
Appellant

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Appeal from the Superior Court of Okanogan County  
Case No.: 04-3-00168-0

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**REPLY BRIEF OF the APPELLANT**

*January 8<sup>th</sup>, 2018*

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***F. Gregory Wilder***  
Appellant, Pro-se  
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## I. IDENTIFY OF THE PARTIES

The Appellant: Francis Gregory Wilder, pro se is herein referred to as; “Greg” and/or “Mr. Wilder” and/or “the father.” The Respondent: Sheila Ann Wilder, is herein referred as; “Sheila” and/or “Ms. Wilder” and/or “the mother.” And: the Child; Joshua Gregory Wilder, is herein referred as: “Joshua” or “Josh” and/or “the child” and occasionally “the student.”

There is no disrespect intended to/for/of any of these parties.

## II. PRELIMINARY STATEMENT

Three years ago, the parents were working through the last “traditional” child support (CP 272), and from that Ms. Wilder commented in a declaration:

“Post Secondary Support has to be addressed May/June of 2016 when we know where our son will attend college and have the details of what that will cost. At that time we will also be able to address all of the factors of RCW 26.19.090 which we cannot at this time because it is premature.” (CP 339 §12 lines 21-24)

Twelve months later, a PSES Order was entered on May 3<sup>rd</sup>, 2016.

Seven months following that, Sheila filed a vindictive and egregious Motion to Adjust Child Support Order on December 5<sup>th</sup>, 2016.

**a) Introduction.** There is no question, *both* parents explicitly reserved the right to petition for *Post Secondary Education Support* (PSES) (CP 671, 485, 375, and 281) *and* there was no surprise when the

father filed a timely *Petition for Modification of Child Support* under the PSES provisions on March 15<sup>th</sup>, 2016. (CP 206) Ms. Wilder, permitted for the default the *Child Support PSES Order* which was subsequently entered on May 3<sup>rd</sup>, 2016. (CP 165) Seven months later, Ms. Wilder filed an antagonistic *Motion to Adjust Child Support*, on December 5<sup>th</sup>, 2016. (CP 156) That took another six months of delays, the trial court eventually entered the adjudication on June 2<sup>nd</sup>, 2017. That Order modified the original May 3<sup>rd</sup>, 2016 *PSES Order* by: reducing the child support from \$594 to \$375 per month, modified the support transfer provisions, and struck the uninsured medical expenses and life insurance coverage. (CP 5) The father filed the *Notice of Appeal* on June 15<sup>th</sup>, 2017. (CP 1)

**b) Fiscal Impacts.**

Mr. Wilder is 74, reasonably healthy, and lives on a tight and planned fixed income (he has been retired for over 10 years) and his 2011-14 four-year average gross income was \$41,000 annually. Converting to monthly, Greg's gross income is \$3,452. (CP 32-34) The father's **monthly net is \$2,923**

Ms. Wilder is 54, healthy, and has a long-term stable employment history. Prior to her 2016 retirement, her 2011-14 four-year average gross income was \$73,000 annually. (CP 304) At that time, the May 3<sup>rd</sup> PSES Order was entered, the ***only*** income provided by Ms. Wilder, (CP 24, 25)

based on her provided records – her gross income were \$4,184 per month.

(CP 24) Ms. Wilder's **monthly net income was \$3,396**

Joshua is 20 and generally healthy, except but for Asthma and ADHA-DSM IV. Josh is enrolled full-time at Central Washington University carrying a full schedule. He works part time off-campus. His 2016 annualized part-time work net income, was about **\$500 per month.**

Based on a precipitate retirement, the mother's Order Re: *Post Secondary Education Payment of Ms. Sheila A. Wilder* on June 2, 2017 (CP 5) reduced Ms. Wilder's PSES from \$594/month to \$375/month. The impact to the father will exhaust his Washington GET savings well prior before Joshua graduates. Also, having that Sheila has refused to provide FAFSA income tax and net-worth information, has hobbled the ability for PELL grants and some other financial aid programs for the child. To cover the PSES, Mr. Wilder's pro rata must shoulder the additional \$219 per month to meet his support obligations... about **\$968 per month.** And it is unreasonable to expect Joshua to add more part-time work on a solid full school schedule.

**c) Lost Justice.** During the December 15<sup>th</sup>, 2016 opening remarks, without oral arguments, the Honorable Christopher Culp stated: *"But now here's -- here's the good news: and that is, I've read all of the material."* (VRP at 5, line 24 through 6, line 6) Consequently, Judge Culp

recused on December 20, 2016. On January 24<sup>th</sup>, 2017 a replacement judge (the Honorable John Hotchkiss) was seated and set the continuation hearing (after 91 days later) for March 14<sup>th</sup>, 2017. (CP 241) *And*, upon reopening the hearing, Judge Hotchkiss commented: “... *I have read -- quite a bit the stuff, certainly not all of the stuff, that’s been presented.*” (VRP at 12, lines 15-17) The father expected without oral arguments and throughout the March 14<sup>th</sup> PSES hearing *and* during the *Reconsideration Hearing* on June 2<sup>nd</sup>, 2017. Rather, the trial court baited the father by poking at the statutes (RCW 26.19.090) and chiding the legislature. (VRP at 37-38) Relating to the Supreme Court Childers’ decision, (VRP at 29, lines 10-21) and the foundation of the PSES legislation, Judge Hotchkiss was (is) on bent on ignoring the statute(s) and legislative intent at the expense of Mr. Wilder. Additionally, Judge Hotchkiss rebuffed the Washington Supreme Court as: “*Bad facts make bad law.*” (VRP at 29, line 20) Although the father previously referred to his Opening Brief (page 2), it deserves to repeat the rant of Judge Hotchkiss, to wit:

“You know, there’s a lot of people in -- the state that --including several judges that believe that the legislature has overstepped its boundaries in requiring support for -- a child who has reached the age of majority -- child’s old enough to join the service, he’s old enough to vote, he’s old enough to, as I say, join the service, get the GI Bill; he’s no longer subject to juvenile court jurisdiction, he’s subject to adult court jurisdiction. He’s no longer subject to parental supervision or -- or parental -- orders, so to speak, and -- So, I think that the courts have to be very careful when you decide to require a parent to pay for a child who’s reached the age of majority who does not have a particular disability... So the motion for reconsideration will be denied.” (VRP at 37-38)

Had the parents remained married, they would have resolved the matter of funding from within their community... and lacking coupled parents, both reserved the right to file for a petition for PSES. The trial court excluded legal options and they are discriminatory under RCW 26.19.090(3), to wit: “... *pursuing a course of study commensurate with the child’s vocation goals...*” (emphasis added). The trial court made it clear that the child would/could not make a choice of vocation. (VPR at 29, line 22 – at 30, line 5)

**d) Conclusions.** The father has provided an accurate, thorough, and compliant Child (Post Secondary Education) Support that was entered on May 3<sup>rd</sup>, 2016. Ms. Wilder simply defaulted. Ms. Wilder has argued that she didn’t have the choice of her attorney – that too is outside of the father’s control. Mr. Wilder had a narrow time for actions to comply with the (a) PSES adjudication. Ms. Wilder simply made a conscience choice... the father and child should not suffer because of the irresponsibility of the mother.

The Trial Court failed by statute, failed by justice, and failed by the canons and *is reversible error*.

### III. STATEMENT OF THE CASE

Responding to the Reply Brief, Mr. Wilder is generally following the content and sequence of Ms. Wilders Respondent's Brief.

**a) Page 1, Paragraph 1. (*This matter comes before...*):**

Mr. Wilder acknowledges the entry of the *Order Re: Post Secondary Education Payment of Ms. Sheila A. Wilder* on June 2<sup>nd</sup>, 2017. (CP 5-6) However, the adjudicated determination(s) are much more than *just* the reduction of the May 3<sup>rd</sup>, 2016 Order of Child (PSES) Support. (CP 165-192) Yes, the Trial Court reduced the support from \$594 to \$357 per month. (CP 5 §1) However, the June 2<sup>nd</sup> Order *also* modified the transfer procedures (§1), modified that all portion of the mother's uncovered medical expenses by excluding her shared costs (§2), and vacated all life insurance sufficient to share PSES protection (§3). (CP 2)

**b) Page 1-2, Paragraph 2. (*Mr. Wilder takes great pains...*):**

The mother understood the PSES timing and expectations and she set the stage for these actions in June, 2015. (CP 339 §12, 13) *And*, as expected, Greg filed the timely PSES Petition on March 15<sup>th</sup>, 2016 (CP 206) and that Order was entered six weeks later, on May 3<sup>rd</sup>, 2016. (CP 165) Seven months later, Sheila filed a *Motion to Adjust Child Support* (as a pretenses of a *Motion to Modify Post Secondary Support*) in December 5<sup>th</sup>, 2016 (CP 159, 149) *and* by her own actions and the content of that

motion, she has accused the father for tormenting and harassing her. (CP 157 §5) Sheila goes on to emphasize her *Respondent's Brief* (pg. 1 ¶2), again, claiming that Mr. Wilder has only filed his Appeal as: "... *as a means of tormenting Ms. Wilder*" and "... *almost like a form of harassment.*" Nevertheless, Greg filed his Appeal *and*; "*Only an aggrieved party may seek review by the appellate court.*" (RAP 3.1) Mr. Wilder filed his *Notice of Appeal* as a matter of right. This "right" should not be of any consider for *any* of Ms. Wilder's claim of harassment or torment. (CP 157 §5)

Prior to the PSES order on May 3<sup>rd</sup>, 2016 most of the discussions between the parties were about unpaid child support, bad checks, the upcoming PSES, and arrears. (CP 242-260) Greg resolved that angst in June, 2016, by shifting the transfers through the Division of Child Support (DCS) in order to avoid additional communications.

**c) Page 2, Paragraph 1-2. (On May 3, 2016, via Default, entered...):**

Ms. Wilder is arguing that the father failed to properly file the *Post Secondary Education Support* (PSES) since he filed it under a *Petition to Modify Child Support Order*. Ms. Wilder is mistaken.

The Washington State Supreme Court, in *Childers v. Childers*, resulted in the codification of Post Secondary Education Support under the "Standards for postsecondary education support awards." The

Washington State Supreme Court ruled in *Childers v. Childers*, 89 Wn.2d 592, 575 P.2d 201 (1978), held that trial courts have the discretion to require a parent(s) to support a child from between 18 of to the child's twenty-third birthday. The Legislature enacted RCW 26.19.090 which governs post secondary educational support. Generally, the trial court imbedded discretion when determining certain conditions and for how long to award post secondary educational support. Some of those considerations include: (a) the age of the child; (b) the child's needs; (c) the parents' expectations for their children when they were together; (d) the child's prospects, desires, aptitudes, abilities or disabilities; (e) the nature of the post secondary education sought; and, among other conditions and expectations, (f) the parents' level of education, standard of living, and resources.

**Firstly**, in order to file for a PSES, the child support order must not have terminated support; in this case on or before June 4<sup>th</sup>, 2016 (high school graduation)... **that condition was met.** (CP 272 & 287) **Secondly**, the child must be enrolled in a qualified post-secondary college, in this case, Central Washington University and he met this standard on December 30, 2015 and confirmed on March, 2016 (CP 199 & 200) and **met that condition.** **Thirdly**, the father was required to file at least a month before Joshua would graduate from high school in June 5<sup>th</sup>, 2016

and subsequently Mr. Wilder filed on March 15<sup>th</sup>, 2016 and **met this condition.**

Procedurally, a parent typically files a Petition to Modify Child Support Order (RCW 26.09.175) using the mandatory form (FL Modify 501 §8).

Regardless of this form, as a *Petition to Modify "Child" Support*, this is not limited to "just" a child support petition. This "child" support can span from high school graduation through his/her 22<sup>nd</sup> year of age. Ms. Wilder is attempting to argue the definition of a "child" when a son or daughter can be of any age.

The father filed a timely *Petition for Modification of Child Support* on March 15<sup>th</sup>, 2016. Given the plethora of information and intent, (CP 243-260 & 339) Ms. Wilder is/was aware and prepared for a Post Secondary Education (PSES) Support action. (CP 206 §1.4 and §1.6)

Mr. Wilder filed a *Declaration* relating to the PSES replete with included exhibits. (CP 190-205)

Furthermore, the *Findings/Conclusions on Petition for Modification of Child (PSES) Support* were filed on May 3<sup>rd</sup>, 2016 also addressed the reasons for modification (CP 187 §2.3)

Ms. Wilder had an extensive support history that was late and in arrears, including unpaid shared medical payments (some of which is yet

unpaid). Under the PSES, the Division of Child Support (DCS) procedures could collect, but not enforce. (CP 189 §2.6)

And wherein the Findings §2.8 (Other):

*“Respondent was served and failed to appear on April 26, 2016 either by pleading or in person, and is in default regarding petitioner’s Petition to Modification of support.”* (CP 189)

The Order of Child Support was entered on May 3<sup>rd</sup>, 2016 and noted §2.1 (Type of Proceeding):

*“order for modification of child support (Post-secondary Education)”* (CP 166)

And wherein the Order §3.5 (Transfer Payment):

The obligor parent shall pay the following amounts per month for the following child: *Joshua Gregory Wilder \$594.* (CP 170)

And wherein the Order §3.7 (Reasons for Deviation from Standard Calculations):

Other reasons for deviation: *“The factual basis for these reasons is as follows: This is a Post-secondary Education standard gross child support for the Washington State Child Support Schedule Worksheets (line 15). (CP 182) The \$594 transfer is made a part of the Post-Secondary Education Distribution (Exhibit ‘A’).”* (CP 171)

And wherein the Order §3.14 (Post Secondary Education Support):

*“The parents shall pay for the post secondary educational support of the child(ren). Post secondary support provisions will be decided by agreement or by the court. The child will graduate from high school in June 4<sup>th</sup>, 2016. The attached exhibit ‘A’ is a/the reasonable and clear budget for college calendar 2016-17.”* (CP 174) Note: Exhibit ‘A’ (CP 181)

And:

Other: *“The transfer under these paragraphs 3.15 and 3.11, the child/student must meet the conditions and standards under applicable RCW 26.19.090 (Standards for postsecondary education support awards).”* (CP 174 §3.14)

And wherein the Order §3.19 (Uninsured Medical Expenses):

Both parents have an obligation to pay their share of uninsured medical expenses. The petitioner shall pay **48%** of uninsured medical expenses (unless stated otherwise, the petitioner's proportional share of income from the Worksheet, line 6) (CP 183) and the respondent shall pay **52%** of uninsured medical expenses (unless stated otherwise, the respondent's proportional share of income from the Worksheet, line 6). (CP 178)

It is clear that Mr. Wilder followed the expected procedure(s) and standards. The Trial Court considered the discretionary use of the advisory guidelines under RCW 26.19.090, including the Cost of Attendance (COA) for Central Washington University, available financial records, etc. Ms. Wilder could have appeared, could have presented a declaration. Ms. Wilder could have represented herself via telephonically. Ms. Wilder could have hired an attorney... she did none of them and chose to default.

**d) Page 3, Paragraph 1-2. (Ms. Wilder had not Appeared or...):**

In order to meet the timely requirements to file and process the Post Secondary Education Support procedures fall within a narrow time-gap. In this case, that was required between March 15<sup>th</sup>, 2016, Joshua's college acceptance offer (CP 200) *and* his high school graduation on June 4<sup>th</sup>, 2017. Mr. Wilder filed the *Summons* and the *Petition for Modification of Child Support* on March 15<sup>th</sup>, 2016. (CP 206) Ms. Wilder simply chose to default. (CP 159 ¶2, 243) Sheila would like to pretend that the father "inflated" the income, when she actually refused to provide her pending

“retirement” replete with her Pension Agreement and she only provided a pay-stub (CP 24) and her 2015 W-2. (CP 25) Even to this date, Ms. Wilder has refused to provide a copy of her Pension Agreement (which includes her medical insurance and possible deferred income). The May 3<sup>rd</sup>, 2016 *Child (PSES) Support Order* and noted §3.13 (Termination of Support):

Other: “*The right to petition for modifications post-secondary support, provided that the child remains in full-term College until his last day of his 23<sup>rd</sup> birthday.*” (CP 174)

This was a proviso in order to make periodic petition(s) for modifications based on tuition/fee/cost changes, pro rata resolution by a future trial court (if necessary), changes of medical needs of the child, etc. Elsewhere of the father’s Opening Brief and in this (Reply Brief) there are differences between a *modification* and an *adjustment*. In essence, the “Adjustment” is limited to **change the amount** of support. If to “Modify” the order would have required other matters, such as a more thorough process & procedures, changes on the transfer determinations, changes on/for medical and life insurances, options for discovery, etc. Ms. Wilder at first filed a Motion to Adjust (CP 156) but then, on the same date, called for a Special Set as a “*Motion to Modify Post Secondary Support.*” (CP 149)

Ms. Wilder’s “story” about her decision to default the PSES Order in May 3<sup>rd</sup>, 2016 was *only* because she needed to “save” enough attorney

fees to afford her attorney fees for an “adjustment.” (Respondent’s Brief Pg. 3 ¶1) Actually, according to her Financial Declaration, she indicates her lawyer fees as a “loan.” (CP 155 §11) It’s a matter of believably and the impact of the trial court and/or the appellant court. In June, 2015, the mother made it clear, that one of the parents would file a PSES in a year. (CP 339 §13) Certainty, and with full awareness, she could/should have fiscally *saved* for that likelihood, in the first place. Instead, she chose to default in May, 2016. (CP 165) Regardless as to if Ms. Wilder needed to save or borrow, are unrelated to her default on May 3<sup>rd</sup>, 2016 PSES. That fault or blame rests exclusive to the mother. The father and child should not suffer from that.

**e) Page 3, Paragraph 2. (*The matter was set for a Hearing...*):**

Again, Ms. Wilder and her attorney have twisted the truth. Mr. Wilder served the City of Coulee Dam as the Mayor. Years ago, he served Okanogan County as their Planning and Economic Development Director. Clearly, there would be occasionally professionally interactions between the court... it’s a small place. Ms. Wilder’s reference to both Judge Rawson and Judge Culp: “... due to their personal interactions...” is an exaggeration. (VRP at 3-5) Ms. Wilder points that the “Special Set” was because of a (the) visiting Judge. When in fact, this hearing was the(a) *Special Set* on December 15<sup>th</sup>, 2016. (CP 149) The Okanogan Bailiff set

the docket on March 14<sup>th</sup>, 2017 for the “visiting judge” was for three months later.

**f) Page 3 & 4, Paragraph 3. (*On the date and time of the hearing...*):**

Regarding this hearing (on March 14<sup>th</sup>, 2017) it was expected to be without oral argument. The trial court commented:

“I would indicate that I have read -- quite a bit the stuff, certainly not all of the stuff...” (VRP at 12, lines 15-17)

The only salvation was that Judge Hotchkiss awarded “some” PSES support reductions as a pyrrhic victory. Judge Hotchkiss railed on the Childers’ case and the subsequent statute(s), including RCW 26.19.090 by blaming the Washington Supreme Court decision as; “*Bad facts make bad law.*” (VRP at 29, line 20) The trial court ignored any calculus, virtually no reasonable findings, and vacate of a pro rata distribution.

#### **IV. ARGUMENT**

Mr. Wilder briefed his arguments in his Opening Brief, however, the father is filing this Reply Brief in response to the mother’s arguments.

**1. Standard of Review.**

Ms. Wilder continues to argue that Mr. Wilder inappropriately filed his March, 2016 *Petition for Modification of Child Support*. Ms. Wilder is mistaken. Ms. Wilder is arguing a non sequitur. Mr. Wilder *appropriately* timely filed the March 15<sup>th</sup>, 2015 Petition (CP 207 §1.4 &

1.5) and the trial court adjudicated that and entered the Order of Child Support on May 3<sup>rd</sup>, 2016. (CP 165 §3.7, §3.14, & §3.19) and (CP 181, 185) Ms. Wilder had ample time to appear and plead – she defaulted. Ms. Wilder could have filed for a review – but she did not. Ms. Wilder could have filed for a reconsideration – and she did not. Ms. Wilder could have appealed – and she did not.

The May 3<sup>rd</sup>, 2016 Findings supported that too. (CP 188 §2.3, §2.6, & §2.8) Mr. Wilder filed his petition/motion/order/findings based on the mandatory forms of the approved “forms.” The then-current mandatory document(s) was the Summons and a *Petition to Modify Child Support Order*. (PTMD) (06/2006) (CP 206-209 §1.4 & 1.6) The PSES enforcement mechanism was the nature of the *Order of Child Support*. (ORS) (10/2009) (CP 165-182 §3.7, 3.14, 3.19 & 3.23) The *Findings on Petition for Modification of Child Support*. (FNFCL) (6/2006) (CP 187-189 §2.3, 2.6, & 2.8) And the supporting *Declaration* and Exhibits on April 18<sup>th</sup>, 2016. (CP 190-205) The mandatory *Plain Language Forms* were changed as of July 1, 2016. Those applicable forms are now: FL Modify 500 (Summons), FL Modify 501 (Petition), and FL Modify 510 (Order & Findings). Each of the new forms are even clearer; the expected instrument(s) to process a *Post Secondary Education Support* is via these mandatory forms. RCW 26.18.220(3)

Mr. Wilder meets and exceeds the provisions of RCW 26.19.090 and demonstrated that by the Petition for Modification of Child Support (CP 206-209), the father's Declaration (CP 190-205), the Order of Child Support (CP 165-181), and the Worksheets (CP 182-186) and a defensible college Cost of Attendance (COA) distribution. (CP 181)

Mr. Wilder properly served the mother a summons and the appropriate Petition in March 15, 2016. The *Order of Child Support* entered on May 3<sup>rd</sup>, 2016. Sheila chose to default. If Sheila had questioned or argued those determinations, she should have done long before seven months later. The action of Ms. Wilder's *Motion to Adjust Child Support* on December 5<sup>th</sup>, 2016 is a very different case. **To be clear, the father is actually appealing the mother's entered *Order Re: Post Secondary Education Payment of Ms. Sheila A. Wilder.* (CP 5)**

Parents have a responsibility to support their children – even past the age of majority. And even more so, relating to child support (PSES) “*should be equitably apportioned between the parties.*” RCW 26.19.001: *Childers v. Childers*, 89 Wn.2d 592, 599, 575 P.2 201 (1978) Failing to apportion or a pro rata distribution support fails by the trial court.

## **2. Child Support Worksheets.**

The father has thoroughly briefed and argued this matter in his Opening Brief (Pg. 33). Nevertheless, under RCW 26.09.175(1) a

“*Modification*” of *Order of Child Support* requires a petition and worksheets. So too, the worksheets require for a *Motion to Adjust Child Support Order* (RCW 26.09.170(7)(b)) The mandatory support instruments of (FL Modify 521 §1) and (FL Modify 501 §1). The *child support “schedule”* is mandatory. (RCW 26.19.035(1); 001(1)), However, under RCW 26.19.090(1), the PSES *child support “schedule”* is subject to advisory and not mandatory. (RCW 26.19.020) There is a conflict of the “schedule” statute(s) and has been argued ad-nauseous. However, under RCW 26.19.090(1), the actual form of the instrument, the “Worksheets” themselves *are* mandatory. (RCW 26.19.050; 035(3)) The missing required worksheets, are a tool for the trial court.

Regardless of the statute conflicts, Ms. Wilder promised to include the worksheets imbedded in her *Motion to Adjust Child Support Order* in §1 of that instrument. Ms. Wilder declared she would do that: (CP 162)

**“Completion of worksheets.** Worksheets in the form developed by the administrative office of the courts ***shall be completed under penalty of perjury and filed in every proceeding in which child support is determined.*** The court shall not accept incomplete worksheets or worksheets that vary from the worksheets developed by the administrative office of the courts.” (emphasis added) RCW 26.19.035(3)

### **3. The Process was Appropriate?**

Ms. Wilder actually filed two separate motions – a *Motion to Adjust Child Support* (CP 156) and the attendant *Motion to Modify Post Secondary Support* on December 5<sup>th</sup>, 2016. (CP 149) Sheila has focused a

lot of effort to convince the Appellant Court that the May 3<sup>rd</sup>, 2016 *Order of Child Support* (CP 165-209) is/was defective. Clearly she is incorrect.

Ms. Wilder has argued that the Trial Court has broad discretion over PSES procedures and the actual determinations. This is so, the Trial Court *does* provide (reasonable) discretion under RCW 26.19.090(2). *And*, as to the transfer methodology, the trial court also has discretion to the practice of transfer(s). RCW 26.19.090(6)

The May 3<sup>rd</sup>, 2016 PSES Order provided a methodology to modify future changes, and this was for a *Petition for Modifications*. (CP 174 §3.13) However, and nevertheless, RCW 26.09.170 defines the how and why of a *petition for modification* or a *motion for adjustment*. *Id.* A petition is “significant in nature and anticipates making substantial changes and/or additions to the original order of support.” In re: *Marriage of Scanlon*, 109 Wn. App. 167, 173, 34 P3d 877 (2001) Ms. Wilder not only wanted to adjust the transfer procedures, but she also wanted to vacate the shared health insurance premiums (CP 176 & 177 §3.18), vacate all uninsured medical expenses (CP 178 §3.19), vacate the applicable life insurance to protect the child (CP 179 §3.23), modify the transfer payment methodology (CP 172 §3.11), and to reduce amount of the transfer (CP 169 §3.5). Clearly this modification *is a significant* change and Ms. Wilder should have filed a ***Petition for Modification of***

*Child Support* in any case. On top of that, Ms. Wilder deceived the superior court by skipping the filing fee and the court did not collect that which is required under RCW 26.09.175(1). The father was never served by a summons, did not include the worksheets, and abbreviated the response time (RCW 26.09.175(2)). Greg had no opportunity to review the WSCSS-Worksheets. And Greg was denied the option for discovery which kept Ms. Wilder's *Pension Agreement* (a key determination of income) – which defines some of her income. Ms. Wilder filed the *Motion to Adjust Support* (CP 156) and then redefined it as a *Motion to Modify Post Secondary* (CP 149) was spurious.

#### **4. Due Process**

The father followed the process of a Petition for Modification of Child Support (PSES) in March 15<sup>th</sup>, 2016. Greg filed the PSES after Joshua was enrolled in Central Washington University, and prior to before Joshua graduated from High School. And there were ample discussions before Mr. Wilder actually filed the petition. (CP 244-260) Greg even suggested (and provided the applicable forms & process) so that the parents could file the petition jointly – through a Joinder. (CP 252 ¶4) Ms. Wilder was unresponsive and subsequently the Order was entered on May 3<sup>rd</sup>, 2016 (CP 165) – under a default. ***This process followed due process.***

Ms. Wilder had a plethora of options to avoid the default. Greg advised to her to work with an attorney and Greg even forwarded some of those communications to her attorney. Suggested that she should contact a fascinator or even appear, even if only telephonically, and she did not.

Sheila's preferred attorney (Anthony Castelda, WSBA #28937) appeared on October 18<sup>th</sup>, 2016. Prior to that time, Mr. Castelda was otherwise unavailable. The PSES Order in May, 2016 included a "due process" to *modify* the support which required via a petition. (CP 173 §3.13) to wit:

*"The right to **petition for modifications** post-secondary support reserved, provided that the child remains in full-time College until his last day of his 22<sup>nd</sup> birthday."* (emphasis added) (CP 174)

Separate from the proviso in that order, the statute(s) provides for either a petition for modification or a motion for adjustment, Ms. Wilder actually ignored all three due process options. (RCW 26.09.170) ***Ms. Wilder did not follow the due process.***

Ms. Wilder could only have filed a *Petition for Modification* under the Order provision and she filed a *Motion to Adjust Child Support*. (CP 156) Ms. Wilder herself was uncertain of what/how to file for a adjust/modify and so she impose a new paradigm and filed it as both an Adjustment (CP 156) ***and*** a Modification. (CP 149)

Regardless of the nature of its motion, the December 15<sup>th</sup>, 2016

*Motion to Adjust Child Support* hearing was *determined without oral arguments*:

“... I don’t think oral argument is necessary. Okay? I think it’s pretty straightforward. And I’m not sure what you can tell me that’s going to add to the written material.” (VRP at 6, lines 3-6)

And prior to that recess, the Honorable Christopher Culp, Superior Court Judge (Okanogan County) was heard on December 15<sup>th</sup>, 2016. That trial court commented;

“Yes. If you -- yes. But now, here’s -- here’s the good news: And that is, I’ve read all of the material. Okay? And I’m -- I’m -- quite certain that you -- if you agree that I can hear it, then -- frankly, I don’t think oral argument is necessary. Okay? I think it’s pretty straightforward. And I’m not sure what you can tell me that’s going to add to the written material.” (VRP at 5, lines 24-25 & at 6, lines 1-6)

Subsequently, the Okanogan trial court recessed the hearing.

Three months later, a visiting trial court, the honorable John Hotchkiss, Superior Court Judge (Douglas County) came back 91 days later to hear the balance of the recessed hearing. Mr. Wilder expected the March 14<sup>th</sup>, 2017 hearing to be *without an oral* argument. Greg expected a recitation of the findings and determinations by the trial court... rather, Judge Hotchkiss took upon himself to lecture the evils of post secondary education support. (VRP at 28, line 20 – at 30, line 11)

## **5. Post Secondary Support under RCW 26.19.090**

Ms. Wilder again fails to recognize that a Child Support Order *is* another form of a Post Secondary Education support, albeit with strings. (RCW 26.19.090(3); (4); & (5)) The Supreme Court held that post-secondary education support therefore *is* child support. *Re: the Marriage of Schneider, 173 Wash.2d 353 (2011)* In 1990, the Legislature codified the statute as under RCW 26.19.090 and for good reasons and purpose. The Washington State Supreme Court ruled in *Childers v. Childers, 89 Wn.2d 592, 575 P.2d 201 (1978)*, that a *child* could be awarded support beyond the age of eighteen.

The mandatory forms imbed both... “traditional” child *and* post secondary education (child) support. The *Petition to Modify Child Support Order* clearly, are under RCW 26.19.090 and 26.09.170; 175 and under the mandatory form FL Modify 501.

Ms. Wilder and her attorney have assumed that the factors were argued and addressed by Judge Hotchkiss and adjudicated to reduce the mother’s support, terminated financial responsibility, vacated uncovered medical expenses, and modified the transfer procedure. The trial court made a determination that the father yet argues – hence this appeal. Ms. Wilder believes that that determination is set in concrete and finds it offensive that the father filed this *Appeal (CP 1)*.

## V. REQUEST FOR COSTS & FEES

The father did not request fees and costs in his Opening Brief (RAP 18.1(a)). The parties have previously honored the *American Rule* regarding attorney fees and ***the mother should not award the attorney fees or costs*** on appeal pursuant to RAP 14.1.

Under RCW 26.09.140, the appellant court has broad discretion in awarding either party of the attorney fees or costs including considering “*the financial resources of both parties may order a party to pay a reasonable amount...*” Greg’s (\$2,980) and Sheila’s (\$2,691+) net incomes are generally comparable. However, and particularly by the increased PSES Greg’s pro rata from \$749 per month to \$968 per month – while Sheila’s pro rata has been reduced her pro rata from \$594 per month to \$375 per month. Sheila is partially supported by another relationship and she also lives part-time with her mother’s home. On the other hand, the father lives on a very tight budget and *his income is fixed*. ***Ms. Wilder should not be awarded attorney costs and fees.***

The parties share a litigation history from the initial dissolution in 2005 through the PSES on May 3<sup>rd</sup>, 2016. The parties have honored the *American Rule* regarding attorney fees. Each and every other action/case by and between the parties, without exception, have incurred their own attorney, fees, and costs. (CP 189, 503, 387, 289, etc.) That pattern is well

tried and proven. ***Ms. Wilder should not be awarded attorney costs and fees.***

Ms. Wilder has caused the subsequent events by her default of the underlying PSES entered in May 3<sup>rd</sup>, 2016. (CP 189 §2.8) Ms. Wilder has unnecessarily impugned the father and Ms. Wilder filed a manipulated *Motion to Adjust Child Support* (CP 156) for a *Motion to Modify Post Secondary Support* in order to circumvent the procedures and the law. (CP 149) ***The mother should not be benefited by recovering any of her attorney fees and costs.***

Ms. Wilder filed her December 5<sup>th</sup>, 2016 *Motion to Adjust Child Support* and declarations were/are more of a vindictive diatribe than a motion for a *Adjustment of Support* order. Given the egregious and published diatribe and rants, (CP 156 §5) ***the court should not award Ms. Wilder's attorney fees and costs.*** (CP 159).

Throughout the case Ms. Wilder filed a litany of confused and confusing motions. (CP 66 lines 8-25) *In re Marriage of Greenlee*, 65 Wn. App. 703, 708, 829 P.2d 1120 (1992). Ms. Wilder's motions and declarations are intransigency. *Schumacher v. Watson*, 100 Wn. App. 208, 216, 997 P.2d 399 (2000) ***Ms. Wilder should not be awarded attorney costs and fees.***

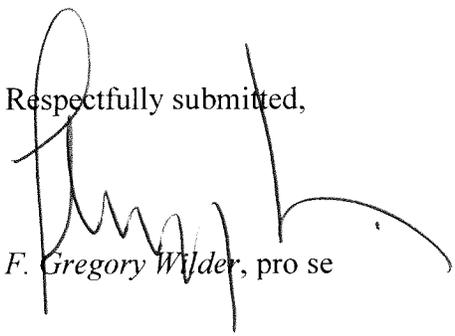
Ms. Wilder began by a default (CP 189) and conclude by an unconscionable diatribe. (CP 157 §5) ***The mother should not award the attorney fees or costs*** on appeal pursuant to RAP 14.1.

## VI. CONCLUSION

Mr. Wilder believes that he has provided a compelling case. However, the Honorable John Hotchkiss, Judge was clearly bias and discriminatory *and* knowingly admonished the legislature and the Washington State Supreme Court. However, substantial justice has not been done and ***is reversible error***.

Mr. Wilder pleads that the Court Of Appeals to restore the original Modification of Child (Post Secondary Education) Support entered on May, 3<sup>rd</sup>, 2016 ***or*** alternatively to remand to a neutral Judge, without bias against the current law, for entry of an appropriate order.

Respectfully submitted,

  
F. Gregory Wilder, pro se

January 8<sup>th</sup>, 2018

**FILED**

JAN 08 2018

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

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
Division III**

In re:

*Francis Gregory Wilder*

Appellant,

v.

*Sheila Ann Wilder*

Respondent.

**NO. 353966 (Division III)**

**NO. 04-3-00168-0 (Okanogan)**

**DECLARATION OF SERVICE**

**(Reply Brief of the Appellant)**

Declarant hereby states under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. That the declarant is now and at all times herein mentioned was a citizen of the United States and a resident of the State of Washington, over the age of eighteen years, not an officer of a plaintiff corporation, and competent to be a witness therein.
2. That on the **8<sup>th</sup>** day of **January, 2018**, the declarant did provide service on the name and address and method below:

Counsel for: Anthony Castelda, WSDA #28937  
Name: Sheila A. Wilder, Respondent  
Address: PO Box 1307 / Tonasket, WA / 98855

1<sup>st</sup> Class U.S. Mail  
 Hand Delivery  
 \_\_\_\_\_

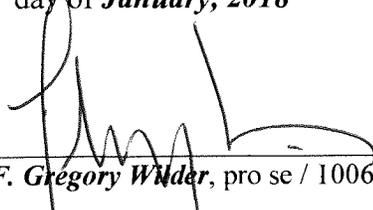
The Court of Appeals of the State of Washington (Division III)  
Name: Renee S. Townsley, Clerk / Administrator  
Address: 500 N. Cedar ST / Spokane, WA / 99201-1905

1<sup>st</sup> Class U.S. Mail  
 Hand Delivery  
 \_\_\_\_\_

A copy of the following documents:

1. **Reply Brief of the Appellant**

DATED this **8<sup>th</sup>** day of **January, 2018**

  
\_\_\_\_\_  
**F. Gregory Wilder**, pro se / 1006 Civic, Coulee Dam, WA 99116

509-633-9722 / [fgwilder@msn.com](mailto:fgwilder@msn.com)