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Court of Appeals, Division III No. 357023

Franklin County Superior Court No. 12-3-50160-9

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**COURT OF APPEALS**  
**DIVISION III, STATE OF WASHINGTON**

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SHANNON MARIE LANGFORD,

Respondent,

v.

CHAD FRANKLIN LANGFORD,

Appellant.

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**AMENDED BRIEF OF APPELLANT**

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**ANDREA J. CLARE, WSBA #37889**  
Telquist McMillen Clare, PLLC  
*Attorneys for Appellant*  
1321 Columbia Park Trail  
Richland, WA 99352  
(509) 737-8500 – *phone*  
(509) 737-9500 – *fax*  
E-mail: andrea@tmc.law

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## **I. INTRODUCTION**

This appeal arises from an action to modify child support. For clarity, the Petitioner/Appellant, Chad Langford, shall be referred to as the “father” and the Respondent/Appellee, Shannon Langford shall be referred to hereinafter as the “mother”. The appeal was filed on December 5, 2017 after the Superior Court Commissioner modified the judgment (for amounts owing during the pendency of this action) and denied the father’s motion for reconsideration. Thus, the father’s appeal is timely.

## **II. ASSIGNMENTS OF ERROR**

- 1) May the court rely upon decisions rendered in the original trial action when fashioning a residential credit in a modification action or are the standards different?
- 2) May the court reject to consider the income of the mother’s live-in partner when evaluating her economic situation?
- 3) Did the Commissioner maintain implicit gender bias which could have impacted determination of the father’s request for a residential credit in a 50/50 residential plan?
- 4) Did the Court error when fashioning a residential credit without showing a formula or calculation establishing child support was equitably apportioned between the parents in a 50/50 residential plan?

### III. PROCEDURAL HISTORY

The father filed a Petition to Modify Child Support Order on December 2, 2016 due to a loss of significant employment. CP 58. In addition to his loss of employment, he was disqualified from unemployment earnings due to his status as a business owner of 15 years. CP 63-64. Given his complete lack of income, he sought to suspend his child support obligation. CP 61-62. The parties agreed to a stipulated order of suspension as of December 1, 2016. CP 30. The father agreed to immediately notify the mother upon securing employment. Id. Despite not having any income, the mother reserved the right to argue what amount, if any, should be owing during suspension. Id. The father obtained employment in March 2017. CP 14. Discovery regarding incomes was thereafter conducted.

Due to scheduling, a hearing to adjust support was not held until August 7, 2017. There the Honorable Court Commissioner Peterson set child support at \$900 to commence December 1, 2016. RP 19, lines 4-6. When questioned about the suspension and commencement of the father's employment, the court stated, "I understand that, but he also had an obligation to make those payments. They were just suspended; so they will not be at the 11 – or the 1,449, they'll be at the 900 as we look back." Id.

at lines 7-14. The matter was continued to September 11, 2017 for entry of orders. RP 20.

Thereafter, the father filed a timely motion for reconsideration. Counsel for the father argued that the mother's domestic partner, with whom she resided, earned at least \$4,000 per month. RP p. 6, lines 15-17 & p. 12, lines 4-7; CP Vol. 1 p. 31, Vol. 2 p. 28. This amount was not considered with regard to the mother's household. Id. In response, Commissioner Peterson issued a letter ruling containing findings of fact and conclusions of law. CP 53-56. Ultimately, the court denied the motion for reconsideration, except to the extent the judgment ordered on September 11, 2017 should be set in the amount of \$6,300, representing "\$900 for each of the seven months the Petitioner worked but failed to make a support payment". CP 56. Commissioner Peterson again declined to address the additional income within the mother's household from a domestic partner. Id.

#### **IV. FACTUAL SUMMARY**

This appeal arises from a modification action to adjust child support. The net incomes were agreed:

**Father = \$5,767.88**                      **Mother = \$3,749.02** (CP 45).

According to the form Worksheets adopted, the father's basic support obligation was \$1,190.18 and the mother's basic support

obligation was \$773.82. CP 5. Since the mother paid \$44.44 monthly for medical insurance premiums, a credit was given rendering the standard calculation to each parent as:

**Father = \$1,217.11**

**Mother = \$746.89 (CP 46)**

The father contended that the mother's child support obligation must be given meaning 'off-setting' the amounts so each are responsible for their respective obligations. Also attached to the final adopted Worksheet was a residential schedule credit using formula. CP 9. The father sought application of said formula or other calculation in determining support. The formula took the amount of adjusted support for each child at \$982.00 and divided the figure equally for each parent as a credit. Id. Then using the father's standard calculated transfer payment of \$1,217.11 less a credit of \$982.00 for a transfer payment after credit of \$235.11. CP 9. This Worksheet was prepared by the mother's counsel and attached to the final order. CP 9. Despite attaching the formula, the court rejected it and ruled at hearing that \$900/mo is the transfer payment. RP 19. The final Child Support Order, provides "all children living together – All of the children are living with both parents most of the time. The standard calculation from the Child Support Schedule Worksheets line 17 for the parent paying support is \$1,217.11." CP 37. The facts that support the reason for awarding a deviation were included in the order as follows:

“The parties each share equal visitation with the children therefore a deviation of \$235.11 does apply.” Id. Yet, that number is inaccurate. Nevertheless, there was no further explanation as to how the court, or why the court, arrived at \$900.00 for the transfer payment. The two documents are inconsistent and therefore ambiguous.

The father moved for reconsideration. In response, Commissioner Peterson issued a decision in the form of Findings of Facts and Conclusions of law in a letter dated November 16, 2017. CP 53. The Commissioner referred to the trial court’s decisions of 2013 with regard to the original support order. Id. Along these lines, she found that the father’s monthly income was only \$570 less than it was when the trial court ruled and the mother’s was \$269 more.<sup>1</sup> Id. The number cited for the father is simply wrong. The Commissioner almost flippantly ‘found’ that the father claimed he had reduced his living expenses due to the closure of his business but then she references his \$2,549.31 housing expenses and \$931.30 vehicle related expenses again ‘finding’: “these expenses are exceptionally high given the Petitioner’s claim that he significantly

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<sup>1</sup> Contrast her written findings with her oral ruling: “And the father’s income has changed rather dramatically from when he was - - from when the last order was entered and that decision was made by Judge Mendoza.” RP 18, lines 12—15.

reduced his expenses.”<sup>2</sup> CP 54. In a completely different tone, the next sentence reads “Respondent claims expenses in the amount of \$3,273.33 per month, although she noted that she was trying to buy another home and had no current mortgage payment.” Id.

In regards to the deviation, the Commissioner’s letter decision found the “Petitioner provided no evidence to show that having the children half the time would substantially increase his costs to support them.” CP 55. Then again almost flippantly, the court stated “based upon the father’s *reduced income and debt*,<sup>3</sup> a deviation was allowed and determined to result in a transfer payment of \$900 per month.” Id. The court reasoned that “\$900 provides adequate child support commensurate with the parents’ income, resources, and standard of living” and “to provide a full deviation... would not maintain sufficient support for the children in each household and is in the children’s best interest.” Id.

In response to the father’s reconsideration motion suggesting a gender bias and urging the court to consider if he were the mother whether support would have been so ordered, to which the Commissioner defensively replied: “Petitioner claims that this Court failed to award him

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<sup>2</sup> The Father notes that when abruptly losing a significant income, a person’s home and vehicle are not readily changeable or commensurate with a lower income for a while. Unbeknownst to him, the Commissioner took issue and judged these debt expenses.

<sup>3</sup> Yet in the last footnote referenced the Commissioner criticized him for not reducing his debt enough.

a full residential credit in part due to gender bias against him is as offensive as it is unsupported. Further, it is at least belied, if not directly impeached, by actions of other judicial officers in this case.” CP 56, §7.

## V. ARGUMENT

### A. Standard of Review.

Appellate courts review child support orders for an abuse of discretion. In re Marriage of Fiorito, 112 Wn.App. 657, 663 (2002). The Appellate court will only reverse the trial court’s decision if it was manifestly unreasonable or was based on untenable grounds or reasons, considering the purposes of the trial court’s discretion. Fiorito, 112 Wn.App. at 663-64; Coggle v Snow, 56 Wn.App. 499, 507 (1990). The party challenging the trial court’s decision bears the burden of demonstrating an abuse of discretion. Schumacher v Watson, 100 Wn.App. 208, 211 (2000).

The reviewing court will not hold the lower court’s child support determination constitutes an abuse of discretion where the record shows the trial court “considered all the relevant factors and the child support award is not unreasonable under the circumstances.” State ex. Rel. J.V.G. v Van Guilder, 137 Wn.App. 417, 423 (2007). As held in In re Marriage of Littlefield, 133 Wn.2d 39, 47 (1997) “[a] court’s decision is manifestly unreasonable if it is outside the range of acceptable choices, given the

facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.” The father contends the Commissioner ‘used the correct legal words’ but abused her discretion.

B. A Trial Court’s original ruling was irrelevant to the Commissioner’s ruling on Modification yet it was repeatedly referenced throughout the Court’s Decision.

Child support is statutory. State ex el. D.R.M., 109 Wn.App. 182 (2001). The legislature intended, in establishing a child support schedule, to ensure that child support orders are adequate to meet a child’s basic needs and to provide additional child support commensurate with the parents’ income, resources, and standard of living. RCW 26.19.001. The legislature also intended that the child support obligation be equitably apportioned between both parents. RCW 26.19.001; see also Clarke v Clarke, 112 Wn.App. 370 (2002). Along these lines, the Court of Appeals must construe the child support statute to achieve overall purpose of the Act. In re Marriage of Oakes, 71 Wn.App. 646 (1993).

The Commissioner’s findings relative to the original trial court’s ruling should not have been a factor in the modification action whatsoever. Nothing in the Child Support statutes or case law suggests the court shall look to the former order as a basis or guideline for ruling on a deviation.

Apparently, the original trial judge's decisions in 2013 had much to do with the Commissioner's ruling decision to adjust support based upon the father's new income as she referenced the same repeatedly in both her oral ruling and written findings. While not cited in the Order on Child Support after modification in 2017, the Commissioner's written findings expressly discuss the Final Order of Support and Worksheets entered in 2013. Some of her findings relative to the 2013 support order were inaccurate (i.e. that father's income was merely \$570 less). To the extent this finding supports her ruling, it is in error. Nevertheless, the 2013 original support order was not made a part of the record in the modification. The Commissioner opted to extensively review and rely upon documents the parties did not offer.

In the written findings, section 5, the Commissioner notes:

“The parties field multiple documents for the court's review prior to the September 11, 2017 hearing on Petitioner's motion to modify child support. **The court reviewed the final documents filed in this case on September 5, 2013, documents associated with the previous request for reconsideration and appellate review**, and all documents related to the Petitioner petition to modify the 2013 child support order”

CP 54. Emphasis added.

It is unknown how much of the Commissioner's decision was based upon the trial court's original ruling. Regardless, no factor exists which

would allow the trial court ruling to lend any weight or credence to a ruling on modification of support.

C. The Commissioner failed to consider the mother's entire economic situation.

Although courts must calculate the basic support obligation according to the schedule, they retain some discretion to deviate from it; that is, to set one or both parents' actual support obligations at a different amount. The statute provides a nonexclusive list of reasons for which a court may properly deviate from the basic support calculation, but also limits or prohibits deviations based on specified grounds. RCW 26.19.075(1). Courts considering whether to deviate from the schedule must consider, and the parties must disclose, “[a]ll income and resources of the parties before the court, new spouses or new domestic partners, and other adults in the households.” RCW 26.19.075(2).

Thus the statute mandates that, “[w]hen reasons exist for deviation, the court shall exercise discretion in considering the extent to which the factors would affect the support obligation.” RCW 26.19.075(4). Whether the court grants or denies the request for deviation, it must enter written findings, supported by evidence, specifying the reasons for the decision. RCW 26.19.075(3). The function of RCW 26.19.075(2) is to preclude a deviation from being granted unless (1) the parties have fully disclosed their resources and (2) the court enters specific reasons for the deviation.”

In re Marriage of Holmes, 128 Wn.App. 727, 737-38 (2005). Despite having information relative to the mother’s additional household support, the Commissioner rejected consideration of such significant contributions. CP Vol. 1 p. 31, Vol. 2, p. 28.

The Commissioner reasoned that the father’s formula in favor of the deviation would leave “insufficient funds in the mother’s household”. However, had the Commissioner considered the mother’s domestic partner that contributed \$4000/mo into her household, the finding would be inappropriate. Though the mother did not expressly list her domestic partner’s income or contribution on her financial declaration, her true household economic picture would have revealed:

	<u>Mother</u>	<u>Father</u>
Income	\$3,749.02	\$5,787.88
Expenses	\$3,273.33 (CP 67)	\$5,690.44 (CP 92)
Domestic Partner	<u>\$4,000.00</u> (CP Vol. 1, p.31, Vol. 2, p. 28)	<u>N/A</u>
<b>TOTAL after expenses:</b>	<b>\$4,475.69</b>	<b>\$97.44</b>

Even without the financial support of the mother’s domestic partner, the mother’s income alone surpasses her expenses. The Commissioner’s findings that the mother ‘lives frugally’ is neither significant nor dispositive. The domestic partner’s contribution flies in the

face of the Commissioner's conclusion of law that the mother would not have sufficient funds in her household if the transfer payment is any less than \$900/mo. The assertion is patently false.

D. Implicit Bias while highly difficult to assess, likely played a role in the Commissioner's decision given the Commissioner's multiple inconsistencies.

The diametrically opposite positions taken by the Commissioner in her ruling on Modification give rise to implicit gender bias concerns. Had the incomes of the parties been reversed, it is highly likely that the Commissioner, a female, would have taken a dramatic reduction in favor of a downward deviation. Besides, if their income is close and they share parenting responsibilities, one would think support would be minimal, if any between parents. At the initial oral ruling, the Commissioner did not take issue with the disparity of incomes between the parties nor the additional expenses that necessarily accompany the children in the father's household. Specifically, the Commissioner initially stated in her oral ruling in relevant part:

"From the Court's - - this Court's perspective, the - - each parent obviously is going to have additional expenses when their children are with them. That - - that is just a given. **The parents are making relatively similar income or have relatively similar income.**" RP p. 18, lines 19-24.

Then she ruled after asking the mother's attorney:

The Court: The number that you came up with, counsel, on your worksheet?

Mr. Defoe: Father was 1,217 without - - without a deviation.  
The Court: All right. So the Court is going to award a downward deviation to \$900 and that is going to begin on January 1<sup>st</sup> of 2017.

RP p.18-19; lines 19-6.

There was no analysis or formula used to arrive at the court's selected \$900 figure. She simply shaved a small amount from the father's standard calculation and claims to have used discretion. Indeed she made up her mind in the moment. Unfortunately, she has no basis or reasoning to support the figure and later resorts to additional inconsistent findings.

Nevertheless, the Commissioner changed courses when she wrote the letter ruling on reconsideration. Along these lines, her initial oral ruling fails to mention the expenses of either party though she largely relies upon such expenses to justify her decision later on. More importantly, she appears quite critical and demeaning towards the father for seeking reconsideration and/or challenging her calculation. In her written findings she rendered the following contrary commentary towards the father:

“The Petitioner provided no evidence to show that having the children half time would substantially increase his costs to support them.” CP 55, section 9. (Emphasis added)

“Petitioner claims expenses of \$5690.44 per month, including \$2549.31 for housing and \$931.30 for a vehicle.

These expenses are exceptionally high given the Petitioner's claim that he significantly reduced his expenses." CP 54, section 7. (Emphasis added).

"Petitioner failed to pay any amount of child support to Respondent during the modification action, resulting in ten months without child support for the children." CP 55, section 9.

"The Petitioner fails to persuade this Court he has downsized in terms of his expenses related to housing and a vehicle. These were voluntary expenses that the Petitioner, as is his \$1500 monthly payment for retirement savings" CP 56, section 5. (Emphasis added).

"If the parties choose to use their income to make purchases or make extra payments on loans, mortgages, or retirement accounts, that reduces available support for the children, but that is the choice they have made." CP 56, section 5. (Emphasis added).

The Commissioner simply ignores the father's declaration wherein he states that he placed his home on the market to reduce his expenses. CP 64, lines 7-8. Clearly the father was being judged and cast in a negative light for losing employment and not immediately dumping debt. In contrast, the Commissioner was rather complimentary to the mother as follows:

"Respondent claims expenses in the amount of \$3,273.33 per month, although she noted that she is trying to buy another home and had no current mortgage payment yet"<sup>4</sup> CP 54, section 7.

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<sup>4</sup> This statement implies the Commissioner considered additional 'non-existent' expenses without any evidence, yet she is critical of the father's failure to support he has any additional expenses or business expenses. CP 54. She is also critical of the father's failure

“The Respondent lives frugally” CP 56, section 5.

“To provide a full deviation as requested by the Petitioner would not maintain sufficient support for the children in each household and is not in the children’s best interest” CP 56, section 9.

The Commissioner’s ruling merely ensures the mother has additional economic support in the mother’s household and less available funds in the father’s household. The ruling is arbitrary. As a result, the Commissioner established the following:

	<u>Mother</u>	<u>Father</u>
Income	\$3,749.02	\$5,787.88
Expenses	\$3,273.33 (CP 67)	\$5,690.44 (CP 92)
Transfer payment	\$900.00	(\$900.00)
<b>TOTAL after expenses:</b>	<b>\$1,375.69</b>	<b>(\$802.56)</b>

Regardless of the expense of the parties, the Commissioner references the fact that the parents’ income is \$2000.00 apart. CP 56, section 8. Her decision to order a transfer payment of \$900.00 to the mother appears to attempt to equalize the parties’ income, much like the original trial judge did which may have been appropriate post dissolution but not necessary or warranted in a modification. The father urges the

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to provide evidence that having the children would substantially increase his costs to support them. CP 55.

appellate court to look beyond the appropriate buzz words used by the Commissioner to support her discretionary determination. The overall impact of the Commissioner's ruling suggests an implicit gender bias. Under no circumstances would the Commissioner have ordered the reverse if the genders were reversed, placing the mother in a negative economic situation.

Implicit bias is a relatively new concept that is rapidly gaining recognition and acknowledgment within the court system. There is no 'cure' for completely ridding ourselves of these hidden influences, however, an appreciation for their existence and an awareness of how they impact decision making will go a long way in helping improve our justice system. State v Sherman, 2012 WL 3765041 (8<sup>th</sup> District Court of Appeals, Ohio), pg 11. Implicit bias, unlike intentional bias, is unconscious. Id. at pg 10. It is the product of our upbringing and our environment. Id. Implicit bias is also not to be confused with what is commonly known as judicial bias; the latter being described as "hostile feelings, ill will, or favoritism toward a litigant or his attorney, resulting in the formation of an anticipated judgment..." State v LaMar, 95 Ohio St. 3d 181 , 186 (2002) (quoting State ex rel. Pratt v Weygandt, 164 Ohio St. 463 (1956).

Implicit bias has been characterized as:

A psychological process in which a person's non-conscious racial beliefs and attitudes affect her or his behaviors, perceptions, and judgments **in ways that she or he are largely unaware of** and typically, **unable to control**. These implicit biases can have behavioral effects even when they conflict with an individual's consciously and genuinely held thoughts and feelings.  
(Emphasis added; internal citation omitted)

See Richardson, Race & Immigration Symposium: Cognitive Bias, Police Character, and the Fourth Amendment, 44 Ariz. St. L.J. 267, 271-272 (2012). See also Greenwald & Hamilton, *Implicit Bias: Scientific Foundations*, 94 Cal. L. Rev. 945 (2006).

Various commentators have discussed the impact of implicit bias on our criminal justice. State v Sherman, at pg.10. It often affects who gets prosecuted, what charges are brought, jury selection, effectiveness of counsel, and sentencing. See, e.g., Kang & Lane, *Seeing Through Colorblindness: Implicit Bias and the Law*, 58 UCLA L.Rev. 465 (2010). There is no reason to believe that implicit bias would not exist similarly in the civil arena. Indeed, it may very well be that under the circumstances, the Commissioner here would have ruled exactly as she did, despite an implicit gender bias. It may also be that if the gender roles were reversed and the mother earned \$2,000 more per month than the Commissioner would have ruled consistently with the proposed formula offered by the father. To know for certain, a specific formula or sound and reasoned basis for which the court determined the amount of a deviation is required. Just using the legally correct words "the court has discretion" and "to provide a

full deviation as requested by Petitioner would not **maintain sufficient support** for the children in each household and is not in the children's best interest" is not enough to decipher if gender bias impacted the decision.

The Commissioner fails to identify how a full deviation (as requested) would not 'maintain sufficient support' in the mother's household when in fact the mother is independently able to clear her monthly expenses solely on her own income. Rather, it appears she is attempting to use the father's income to subsidize the mother's on a modification.

E. The Court failed to apportion the support obligation between **both** parents.

This court is mandated to follow the statute in fashioning the support order. As noted above, RCW 26.19.001 requires that children receive support adequate to meet their basic needs and provide additional financial support "commensurate with *the parent's income, resources,* and standard of living." The italics underscore the court must determine additional support after both parent's incomes and resources are considered.

Along these lines, both biological parents have an obligation to support their children. State v Wood. 89 Wn.2d 97, 100 (1977). A parent's obligation for the care and support of his or her child is a basic tenant

recognized in this state without reference to any particular statute. In re Guardianship of Rudonick, 76 Wn.2d 117, 125 (1969); In re Adoption of Lybbert, 75 Wn.2d 671 (1969). Yet it is not shown or known how the Commissioner factored the mother's obligation to support the children.

In ruling the father's transfer payment shall be \$900.00, the court failed to equitably apportion the support obligation *between* the parents. Notably, the court recognized the standard calculation of the father in the amount of \$1,217.11. (See Order §8, worksheet line 17) but not the mother's standard calculation. The court wholly failed to appreciate that the mother has an obligation/duty to support the children in the amount of \$746.89.

## VI. CONCLUSION

Based upon the foregoing, the father respectfully requests the court review the appeal and remand with appropriate instructions to the court.

RESPECTFULLY SUBMITTED, this 19<sup>th</sup> day of April, 2018.

TELQUIST McMILLEN CLARE, PLLC



By: \_\_\_\_\_

**ANDREA J. CLARE**, WSBA #37889

*Attorneys for Appellant*

1321 Columbia Park Trail

Richland, WA 99352

(509) 737-8500

(509) 737-9500 – fax

[andrea@tmc.law](mailto:andrea@tmc.law)

**CERTIFICATE OF FILING AND SERVICE**

The undersigned hereby declares, under penalty of perjury, under the laws of the State of Washington, that on April 19, 2018, I electronically filed this Brief of Appellant with the Court of Appeals, Division III, and forwarded a copy to the attorney for Respondent as follows:

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**DATED** this 19<sup>th</sup> day of April, 2018, at Richland, Washington.

TELQUIST McMILLEN CLARE, PLLC



By: \_\_\_\_\_

**KRISTI FLYG**, *Legal Assistant*

**TELQUIST MCMILLEN CLARE, PLLC**

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