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Court of Appeals
Division III
State of Washington
5/9/2018 2:53 PM

COURT OF APPEALS, DIVISION III. No. 357023
FRANKLIN COUNTY SUPERIOR COURT NO 12-3-50160-9

SHANNON MARIE LANGFORD
Respondent,

v.

CHAD FRANKLIN LANGFORD
Appellant.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

	<u>Page No.</u>
I. INTRODUCTION.....	1
II. STATEMENT OF THE CASE.....	1-3
III. ARGUMENT.....	3-13
1. <u>1. The trial court did not rely on or err in referring to a trial decision during a modification action.</u>	4
2. <u>The trial court did not “reject to consider” the income of mother’s live in partner.</u>	4-5
3. <u>The trial court maintained no gender bias in rendering its decision.</u>	5
4. <u>The trial court explained its decision in establishing the child support amount, and was not required to show what formula was used in determining the transfer amount.</u>	6-12
5. <u>Attorney’s fees</u>	12
IV. CONCLUSION.....	13

TABLE OF AUTHORITIES

Page No.

Washington Cases

In re Marriage of Arvey
77 Wash.App. at 819, 894, P.2d 1346..... 9

In re Marriage of Booth
114 Wn.2d 772, 776, 791 P.2d 519 (1990).....4

Dix v. ICT Grp., Inc.
160 Wn.2d 826, 833, 161 P.3d 1016 (2007).....4

Kaur v Chawla,
11 Wn. App. 362, 522 P.2d 1198, review denied, 84 Wn.2d 1011
(1974)10

In re Marriage of McCausland,
159 Wn.2d 607, 152 P.3d 1013 (2007).....6

State ex rel. M.M.G v. Graham,
159, Wn.2d 623, 632, 152, P.3d 1005 (2007);
123 Wn. App. 931, 933, 99 P.3d 1248 (2004), *aff'd in part, rev'd*
in part on other grounds,
159 Wn.2d 623, abrogated on other grounds.....6, 7, 8, 9

Marriage of Oakes,
71 Wn. App. 646, 652 (1993)10

Mallen v. Mallen,
4 Wn. App. 185, 480 P.2d 219 (1971)10

In re Marriage of Schnurman,
Wn.1d, 316 P.3d 514 (2013)..... 6, 7, 8

Sigler v. Sigler,

85 Wn. App. 329, 338, 932 P.2d 710 (1997).....	11
Spreen v. Spreen, 107 Wn. App. 341, 346 (2001).....	4
State ex rel. California v. Benjamin 50 Wn. App. 284, 291, 751 P.2d 1189 (1988).....	10
State v. Douty, 92 Wn.2d 930, 934, 603 P.2d 373 (1979)	10
State ex el. D.R.M 109 Wn.App. 182 (2001).	4
State v. Hill, 123 Wash.2d 641, 870 P.2d 313 (1994)	4
Van Tinker v. Van Tinker, 38 Wn.2d 390, 229 P.2d 333 (1951).....	10

Other Authorities

RCW 6.09.011(4)(8).....	8
RCW 26.19	1
RCW 26.19.001	8
RCW 26.19.080(1).....	8
RCW 26.19.075(1)	11
RCW 26.19.075(1)(d)	11
26.09.140.....	11

I. INTRODUCTION

The Respondent requests that the court affirm the trial court's ruling on the modification of child support. The appellant contends that the trial court's decision constituted an abuse of discretion, was based on implicit gender bias, and did not follow the statutory guidelines laid out in RCW 26.19. These assertions are baseless and false. The trial court's ruling should be upheld.

II. STATEMENT OF CASE

On 09/02/16 Mr. Langford filed a Petition to Modify the Child Support Order entered on 9/5/13 in Franklin County, WA. CP 58.

Ms. Langford brought forward such Petition because of his "loss of employment and disqualified unemployment earnings." CP 58.

Ms. Langford retained counsel, and agreed to suspend child support while Mr. Langford was unemployed. CP 30. The Order re: Suspension of Child Support entered on 12/19/16 states that "The Petitioner reserves the right to argue what amount, if any, shall be owing during suspension." Id.

In March 2017, Mr. Langford obtained a position as a contractor with a Customer Experience/Software firm. CP 14.

On 6/29/17, Ms. Langford filed a Motion to Reinstate Child Support. In the Motion, Ms. Langford asks for Mr. Langford to pay child support from December of 2016 to present. (See attached Exhibit A).

On 6/30/17, counsel for Mr. Langford filed a Motion to adjust Child Support Order. CP 65-66.

Filed with the Motion, was the supporting Declaration of Chad Langford. The Declaration of Mr. Langford states that Mr. Langford would be paying additional taxes, healthcare benefits, retirement, and college funds. He also asked that the court take into consideration that when he and Ms. Langford divorced (4 years prior to this action) he was awarded all of the community debt. Mr. Langford alleged that at the conclusion of the divorce, Ms. Langford was compensated for the value of his company. CP 13-18.

On 7/13/17, Ms. Langford filed a responsive declaration, in which she states that she was not compensated in any way for Mr. Langford's business. Ms. Langford explains that Mr. Langford was awarded the debt that was associated with his then current residence. CP 1-3.

On 8/7/17, the court heard Ms. Langford's Motion to Reinstate Child Support, and Mr. Langford's Motion to Adjust Child Support. VPR 1-26.

The court, having considered all pleadings previously filed, including financials for both parties, ordered a transfer payment of \$900.00 to begin January 1, 2017. CP 19-28. The standard calculation was \$1,217.11. CP 21. However, the court awarded a residential credit and ordered the transfer payment of \$900.00. CP 21-22.

The Final Order of Child Support pursuant to the ruling was entered on 9/11/17. CP 19-28.

On 9/21/17, Mr. Langford filed a Motion for Reconsideration of the Final Order of Child Support entered on 9/11/17. CP???

On November 16, 2017 this motion was denied, except for the amount of back support. CP 53-56

Chad Langford timely appealed. Shannon Langford requests that the trial court's ruling be upheld.

III. ARGUMENT

A. Standard of Review.

The issue within this case is subject to the abuse of discretion standard. A trial court's order of child support is reviewed for abuse of discretion. **In re Marriage of Booth**, 114 Wn.2d 772, 776, 791 P.2d 519 (1990). A trial court abuses its discretion if its decision rests on unreasonable or untenable grounds. **Dix v. ICT Grp., Inc.** 160 Wn.2d

826, 833, 161 P.3d 1016 (2007). A trial court necessarily abuses its discretion if its ruling is based on an erroneous view of law or involves incorrect legal analysis. **Id.**

The decision is reviewed “for substantial supporting evidence and for legal error.” **Spreen v. Spreen**, 107 Wn. App. 341, 346 (2001).

“Substantial evidence supports a factual determination if the record contains *sufficient evidence* to persuade a fair-minded, rational person of the truth of that determination.” (*Emphasis added*) **Spreen**, at 346.

Unchallenged findings of fact are verities on appeal. **State v. Hill**, 123 Wash.2d 641, 870 P.2d 313 (1994).

B. Issues:

1. The trial court did not rely on or err in referring to a trial decision during a modification action.

As referenced in appellant’s brief, child support is statutory. *Stave ex el. D.R.M.*, 109 Wn.App. 182 (2001). So long as the decision is based off statute, any references to prior decisions are not an abuse of discretion. Appellant provided no case law to support the assertion that a reference to prior rulings has an inappropriate effect on new proceedings.

2. The trial court did not “reject to consider” the income of mother’s live in partner.

Mother's financial declaration listed the income of her live in partner, and her partner's paystub was provide to the court. CP 28. At no point in any hearing did the court indicate that this information was not considered or "rejected." In her written decision on the motion for reconsideration, the Honorable Commissioner Peterson noted that she reviewed "all documents related to Petitioner's petition to modify the 2013 child support order." CP 54.

3. The trial court maintained no gender bias in rendering its decision.

Father's argument that the Court had a gender bias in making its decision on child support is completely inappropriate and unsupported by evidence. The Court properly followed the guidelines that have been clearly established by case law in determining a child support transfer payment for parties with a split custody residential schedule. Father argued this issue in his motion for reconsideration. In her written decision on the motion, Commissioner Peterson noted, "Finally, Petitioner claims that this Court failed to award him 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.

4. **The trial court explained its decision in establishing the child support amount, and was not required to show what formula was used in determining the transfer amount.**

The Court properly apportioned the support obligation between both parents. In the written decision on the motion for reconsideration, the standard calculation and residential schedule deviation was explained in detail CP 55 -56.

The Washington State Supreme Court has held that the statutory child support schedule applies in shared residential placement situations. *State ex rel. M.M.G v. Graham*, 159, Wn.2d 623, 632, 152, P.3d 1005 (2007); *State ex rel. M.M.G. v. Graham*, 123 Wn. App. 931, 933, 99 P.3d 1248 (2004), aff'd in part, rev'd in part on other grounds, *Graham*, 159 Wn.2d 623, abrogated on other grounds, *In re Marriage of McCausland*, 159 Wn.2d 607, 152 P.3d 1013 (2007).

A Division One Court of Appeals decision mirrors the facts contained within this case. *In re Marriage of Schnurman*, Wn.1d, 316 P.3d 514 (2013). This case affirmed that Washington Law and legislature have determined the proper method for calculating child support when parents share equal residential time. A summary of relevant facts are as follows:

The *Schnurman* case involves parties dissolving a 10 year

marriage, wherein a final parenting plan was entered granting shared and equal residential time with the children. The trial court found father's income to be \$6,338, mother's income to be \$3,380.00, and named father as the obligor. Father was ordered to pay the standard transfer amount of \$1,300.00. Father requested a downward deviation and was denied on the basis that the father could not prove having the children half the time would significantly increase his costs to support the children or reduce wife's expenses for the children. The trial court also found that a downward deviation would result in insufficient funds for the wife's household. Father appealed. *Id* at 516.

On appeal, father argued that the standard calculation did not apply in shared custody situations like theirs; that only a parent who has the children a majority of the time is entitled to child support; that the trial court abused its discretion in awarding mother a transfer payment; that Washington Legislature and Courts have determined the proper method for calculating child support in shared residential cases; and requested that the Court consider and equitably apportion the expenses each parent pays. *Id* at 517.

The Division One Court of Appeals disagreed with the father and upheld the trial court's decision. Their reasoning being that the Washington State Supreme Court, affirming Division One, previously held

that the statutory child support schedule applies in shared residential situations under *State ex rel. M.M.G v. Graham*, 159 Wash.2d 623, 626, 632, 152 P.3d 1005(2007). Additionally, that under RCW 26.19, the Child Support Schedule Statute, the legislature's intent was clear:

"...to ensure child support orders are adequate to meet a child's basic needs and provide adequate child support commensurate with the parent's income, resources and standard of living." RCW 26.19.001. *Id* at 517.

The Court of Appeals also found that the Graham case controlled and determined the process for entering an order of child support in accordance with RCW 26.19.011(1). *In re Marriage of Schnurman*, Wn.1d, 316 P.3d 514 (2013) at 518. First, the basic child support obligation is set from the table based on parent's combined monthly income and ages. Second, the trial court allocates the child support obligation between the parents based on each parent's share of the combined monthly income. RCW 26.19.080(1). Third, the court determines the presumptive amount of child support owed by the obligor parent to the obligee RCW 26.19.011(8). Fourth, if requested, the court can consider to deviate upwards or downwards from the standard calculation RCW 26.09.011(4)(8). The court has discretion to deviate from the standard calculation based on factors like a parent's income and expenses, obligations to children from other relationships, and the residential schedule.

This is precisely what happened in this case. There was no error or abuse of discretion. The parties stipulated that father's net income is \$5,768 and mother's is \$3,749. CP 54. Pursuant to the worksheets filed in this case, father grosses considerably more than mother does monthly. The standard calculation for a transfer payment from father to mother is \$1,217.00. CP 4-9. This was calculated based on the parent's income, and amounts were allocated to each parent. The court then considered a deviation and awarded one to father, down to \$900.00.

There is no requirement that a specific formula used when calculating residential credits are binding on the court. Father cited no case law or statutory basis to support this argument. In fact, our State Supreme Court under *Graham* says the opposite. In *Graham*, father argued the Arvey formula should be applied to equal residential schedules "by analogy." *Id.*, at 633. The Supreme Court cited two reasons for denying his request. First, in a split residential situation, each parent has residential time with one or more children. If the children are different ages or have different needs, the parents' respective burdens are different and the child support obligation must take those differences into account, a fact the *Arvey* court acknowledged but did not resolve. 636 77 Wash.App. at 819, 894 P.2d 1346. Conversely, in shared residential situations, both parents are responsible for the same children and the same needs. And

second, because the statute explicitly gives the trial court discretion to deviate from the basic child support obligation based on the facts of a particular case, a specific formula is neither necessary nor statutorily required to ensure the parents' child support obligation is properly allocated. Additionally, during argument, counsel for the appellant acknowledged this, saying

“We’ve already taken this issue up on appeal. Your Honor has discretion to do whatever you want. If you adopt the formula provided by FamilySoft or if you disregard it completely; or if you decide it’s going to be “x” if you create your own formula, or if you discount 500, it’s completely up to you. And unless there’s an abuse of discretion, it’s going to be affirmed.” (RP 15: 22-35; 16:1-4).

Father argues that because the parties share equal residential time, that there is no “need,” for child support. Again, this position is not supported by any case law or statute, as need has no relevance in determining child support. The legislative intent of support schedule is “adequacy of the support amount” rather than “equity between the parents.” *In re Marriage of Oakes*, 71 Wn. App. 646, 861 P.2d 1065 (1993); *In re Marriage of Booth*, 114 Wn.2d 772, 791 P.2d 519 (1990); *Ditmar v. Ditmar*, 48 Wn.2d 373, 293 P.2d 759 (1956). Parents have a common law obligation, as well as a statutory obligation, to support their children. *State ex rel. California v. Benjamin*, 50 Wn. App. 284, 291, 751 P.2d 1189 (1988); *State v. Douty*, 92 Wn.2d 930, 934, 603 P.2d 373

(1979); *Kaur v Chawla*, 11 Wn. App. 362, 522 P.2d 1198, review denied, 84 Wn.2d 1011 (1974); *Mallen v. Mallen*, 4 Wn. App. 185, 480 P.2d 219 (1971); *Van Tinker v. Van Tinker*, 38 Wn.2d 390, 229 P.2d 333 (1951).

Residential credits are discretionary and the court shall consider evidence of the increased costs to the obligor and decreased costs to the recipient (implying its the obligor's burden to present such evidence).

State ex rel. Sigler v. Sigler, 85 Wn. App. 329, 338, 932 P.2d 710 (1997).

RCW 26.19.075(1)(d) Residential schedule:

“The court *may* deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving temporary assistance for needy families. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.”
(Emphasis added).

RCW 26.19.075(1) explicitly states that in using its discretion to deviate from the standard calculation, the court must base their decision on such factors as *the parents' income and expenses*, obligations to children from other relationships, and the children's residential schedule. **Id.**

(Emphasis added.)

In this case, father filed no supporting documentation which would demonstrate that he had any increased costs resulting from the amount of time the children spend with him. As noted in the written response to motion for reconsideration, Commissioner Peterson found that:

“The Petitioner provided no evidence to show that having the children with him half of the time would substantially increase his costs to support them...However based on the Petitioner’s reduced income and debt, the court allowed a deviation for the residential credit, then determined the amount of the deviation would result in a child support transfer payment of \$900.00 per month. A deviation of \$900 provides adequate child support commensurate with the parents’ income, resources, and standard of living. 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 55.

5. ATTORNEY’S FEES

RCW 26.09.140 states that:

“The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorneys' fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs.”

The respondent in this case has much more limited financial means than the appellant. Appellant/father nets \$2,018.86 more than mother monthly. CP 4. As noted in the written decision on the motion for reconsideration, respondent/mother “lives frugally.” CP 56. Her financial declaration demonstrates that she brings in just enough to cover her monthly expenses. CP 67-72. The respondent should be awarded attorney’s fees pursuant to RAP 18.1 and RCW 26.09.140.

IV.CONCLUSION

The trial court’s ruling should be affirmed. Shannon Langford should be awarded attorney’s fees for the necessity of responding to this appeal.

Dated this 9 day of May, 2018.

Defoe Pickett Law Office

By:



Steve Defoe, W.S.B.A#25837
Attorney for Shannon Langford, Respondent.

CERTIFICATE OF FILING AND SERVICE

The undersigned hereby declares, under penalty of perjury, under the laws of the State of Washington, that on May 9th, 2018, I electronically filed this Respondent's Brief with the Court of Appeals, Division III, and forwarded a copy to the attorney for Appellant as follows:

Andrea J. Clare Telquist McMillen Clare, PLLC 1321 Columbia Park Trail Richland, WA 99352	<input checked="" type="checkbox"/> E-mail <input checked="" type="checkbox"/> Court of Appeals electronic delivery
--	---

Dated this 9th, day of May, 2018 at Kennewick, WA.

Amy Crider
Amy Crider, Associate Attorney

Exhibit A

COPY
ORIGINAL FILED

JUN 29 2017

MICHAEL J. KILLIAN
FRANKLIN COUNTY CLERK

Superior Court of Washington, County of FRANKLIN

In re:

Petitioner:

SHANNON MARIE LANGFORD

And Respondent:

CHAD FRANKLIN LANGFORD

No. 12-3-50160-9

Motion to Reinstate Child Support
(MT)

Motion to Reinstate Child Support

To both parties:

Deadline! Your papers must be filed and served by the deadline in your county's Local Court Rules, or by the State Court Rules if there is no local rule. Court Rules and forms are online at www.courts.wa.gov.

If you want the court to consider your side, you must:

- File your original documents with the Superior Court Clerk; AND
- Give the Judge/Commissioner a copy of your papers (if required by your county's Local Court Rules); AND
- Have a copy of your papers served on all other parties or their lawyers; AND
- Go to the hearing.

The court may not allow you to testify at the motion hearing. Read your county's Local Court Rules, if any.

Bring proposed orders to the hearing.

To the person filing this motion:

You must schedule a hearing on this motion. You may use the *Notice of Hearing* (form FL All Family 185) unless your county's Local Court Rules require a different form. Contact the court for scheduling information.

Optional Form (05/2016)
FL All Family 181

Motion for Order

p. 1 of 2

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734-9258

COPY

1 **To the person receiving this motion:**

2 If you do not agree with the requests in this motion, file a statement (using form FL All Family 135, *Declaration*)
3 explaining why the court should not approve those requests. You may file other written proof supporting your side.

4 **1. Relief Requested**

5 My name is Steve Defoe. I ask the court to approve the following orders:

6 Child Support Order and WSCSSW to reinstate Child Support.

7 **2. Statement of Issues**

8 I ask the court to decide the following issues:

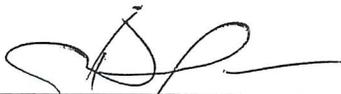
9 On 12/19/2016, an order was entered to suspend child support and reserve on back
10 support until further court order. Respondent now is responsible for child support from
11 December of 2016 to present. He should be required to pay support at the currently
12 calculated transfer payment according to updated worksheets that include his income from
13 his new employment.

14 **3. A Proposed Order is not attached to this *Motion*.**

15 **Person making this motion fills out below**

16 I declare under penalty of perjury under the laws of the state of Washington that the facts I have
17 provided on this form are true.

18 Signed at: Kennewick, WA Date: _____

19 
20 _____ Steve Defoe WSBA# 25837
21 *Person making this motion signs here* *Print name here*

22 I agree to accept legal papers for this case at

23 **Warning!** Documents filed with the court are available for anyone to see unless they are sealed. Financial,
24 medical, and confidential reports, as described in General Rule 22, **must** be sealed so they can only be seen by
25 the court, the other party, and the lawyers in your case. Seal those documents by filing them separately, using a
Sealed cover sheet (form FL All Family 011, 012, or 013). You may ask for an order to seal other documents.

DEFOE PICKETT LAW OFFICE

May 09, 2018 - 2:53 PM

Transmittal Information

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