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Division III Case No. 366707

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

**ESTATE of SHENNEN GOODYEAR-BLACKBURN (substituted for
Shennen Goodyear-Blackburn), APPELLANT**

v.

SHAWN BLACKBURN, RESPONDENT

REPLY BRIEF OF APPELLANT

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RULE: A two-year statute of limitations applies procedurally for requesting reimbursement for overpayment of child expenses actually paid, and the reimbursement is substantively capped at no more than twelve months of the current or pending child support, whichever is lesser, and this rule of reimbursement is still also subject to equitable defenses for further reductions and limitations.

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I. INTRODUCTION TO THE REPLY OF ESTATE OF SHENNEN GOODYEAR-BLACKBURN (aka “Shennen”)

Shawn Blackburn’s Response Brief attempted to turn legal questions back into factual questions, subject to substantial evidence standards of review. However, the important questions in this appeal are not only issues of law, but many are issues of law without guiding appellate authority. Shennen, in her Reply Brief, seeks to avoid repeating her Opening Brief, and instead labors to tightly focus the questions of law.

II. QUESTIONS OF LAW

A. Obligor and Obligee under a Child Support Order

Shawn argues, especially at pages 21 and 35-36 of his Response, that if Shennen owes Shawn reimbursement for overpayment of expenses, then Shennen is transmuted into an “obligor” under the RCW 26.18.020 definitions of those terms. This transmutation then has implications for Shawn’s arguments about attorney’s fees.

1. Statutory Definitions of Obligor and Obligee

RCW 26.18.020 defines the terms as follows (emphasis added):

(4) "**Obligee**" means the custodian of a dependent child, the spouse or former spouse or domestic partner or former domestic partner, or person or agency, to whom a duty of support or duty of maintenance is owed, or the person or agency to whom the right to receive or collect support or maintenance has been assigned.

(5) "**Obligor**" means the person owing a duty of support or duty of maintenance.

On page 21 of Shawn's Response Brief, he argues:

In this instance, the Estate of Shennen owes a duty of support and therefore is the obligor for the child support reimbursements

Issue of Law: Is the "custodian of a dependent child" transformed into an obligor if a the "custodian" of the dependent child owes an expense reimbursement?

ANSWER: No. "Expenses" are not "support," and *only the custodian of the dependent child to whom support is owed* is statutorily defined as an *obligee*. The obligor, Shawn Blackburn, continued to owe "a duty of support," and remained the obligor.

The statute does not have a see-sawing definition of "obligor" and "obligee," while the custodian who is owed support remains unchanged.

Shawn resumes this line of argument at pages 35 and 36 in his Response Brief when he wishes to cast himself as "the prevailing obligee" in seeking an award of fees. The same law applies. (NOTE: Shawn cites to "RCW 26.18.060," which does not exist, but RCW 26.18.160 is presumed by Shennen to be Shawn's reference.)

An obligor who prevails under RCW 26.19.080, and establishes that the obligee owes reimbursement of overpaid expenses, remains an

obligor. And the obligee simply becomes *an obligee who owes the obligor reimbursement*.

There is no statutory alchemy that makes Shawn the “obligee.”

2. Meaning of “Obligor” for Shawn’s Use of 26.18.160

Shawn goes on to argue, on his Response Brief pages 35-36, that he is owed attorney’s fees under RCW 26.18.160 which reads (emphasis added):

In any action to enforce a support or maintenance order under this chapter, the prevailing party is entitled to a recovery of costs, including an award for reasonable attorney fees. An obligor may not be considered a prevailing party under this section unless the obligee has acted in bad faith in connection with the proceeding in question.

NOTE: Shawn’s motion for reimbursement was brought under RCW 26.19.080. The Title is 26, but the Chapters are respectively “18,” and “19.” RCW 26.18.160 only applies to Chapter 18 (support).

Application of the Law: First, as was noted, above, even if the statute applies to the entire child support order, Shawn is not transmuted into the obligee, just because Shennen, the obligee, owes the obligor reimbursement of expenses. Who owes support (obligor), and who has the child and receives support (obligee), is not changed by issues regarding expenses.

Order of 3/6/19 Had No Finding of Bad Faith: More importantly, the Order and Judgment of 3/6/19 (CP: S22-340 to 374) that is on appeal had a substantial amount of text in the “Findings” section, and *at no point did the trial court make a finding of bad faith on the part of Shennen*. As the obligee (Shennen) had no bad faith, she was not ordered to pay fees, and, indeed, without that finding, could not be so-ordered under the statute.

The trial court’s Order of 3/6/19 stated: “Neither party shall be entitled to reasonable attorney’s fees.” (CP: S22-374)

Shawn Filed No Cross-Review Under RAP 5.1(d): Shawn did not file a cross appeal of the court’s rejection of his argument, nor of his denial of fees, under RAP 5.1(d), and his time allowed to do so under RAP 5.2(f) is long past.

3. Conclusion: Shawn Remained Obligor and Shennen Had No Bad Faith as Obligee

Because Shawn remains the obligor, and because Shennen was not found to have behaved in bad faith (and no appeal was taken by Shawn on this issue), Shawn is not entitled to fees under RCW 26.18.160.

B. “Support” and “Expenses” as Distinct Terms

The statutory definitions of “obligor” and “obligee” are clear in themselves. However, this section addresses Shawn’s attempts to conflate

“support” and “expenses” as identical (and therefore redundant) terms in the statutes.

These terms are clearly distinct, ultimately with implications for the statute of limitations. For now, the distinction between “support” and “expenses” will be revisited.

1. Shawn’s Proposed Unity of Expenses and Support

Shawn Blackburn’s position is that all support is support, even if it consists of expenses. On page 11 of his Response Brief, Shawn writes:

Appellant attempts to isolate one aspect of child support from other aspects of child support...But all aspects of child support ...were addressed with a standard form “Child Support Order.”

In this presentation of the issue, Shawn admits at least some distinction *between* “one aspect of child support” *and* “other aspects of child support.”

In other words, even in his attempt to conflate “support” with “expenses,” Shawn still must acknowledge the distinction.

Later in his Response Brief, on page 15, Shawn again admits the distinction when he writes (emphasis added):

...so persons subject to child support orders are on notice that they had better keep records on their [child support] payments and expenses...

As a final example, on the bottom of page 17 to the top of page 18 in his Response Brief, Shawn writes:

Although child care expenses are treated slightly differently than the basic child support obligation in a few ways, it is still child support within...the “child support” order.

Application of Shawn’s Concession: Shawn admits that “expenses” are something distinct from “support,” and he often retreats to the position that they are the same thing since they are often both listed in a “child support order.” That two different things (expenses and support) are included in a third thing (child support order) does not justify conflating two, or three, of these concepts.

For example, calling a document a “parenting plan” does not mean that it does not contain distinct provisions on limitations, visitation, transportation, holidays, vacations and decision-making.

“Support” is one thing; “expenses” are another; and “child support order” is yet another. These are three distinct legal concepts and three distinct actual things.

2. Law of Statutory Construction: Different Terms Mean Different Things

Shawn Blackburn is asking the court to ignore a most basic rule of statutory construction when he asks the court to conflate terms:

When the legislature employs different terms in a statute, we presume a different meaning for each term. *State v. Roggenkamp*, 153 Wash.2d 614, 625, 106 P.3d 196 (2005).

Koenig v. City of Des Moines, 158 Wash. 2d 173, 181, 142 P.3d 162, 165 (2006).

For example, in *State v. Roggenkamp* the court presumed that the legislature meant to distinguish “reckless driving” from driving a vehicle “in a reckless manner.”

Another fundamental rule of statutory construction is that the legislature is deemed to intend a different meaning when it uses different terms. *State v. Beaver*, 148 Wash.2d 338, 343, 60 P.3d 586 (2002) (“[w]hen the legislature uses different words within the same statute, we recognize that a different meaning is intended.”); *Simpson Inv. Co. v. Dep’t of Revenue*, 141 Wash.2d 139, 160, 3 P.3d 741 (2000) (it is “well established that when ‘different words are used in the same statute, it is presumed that a different meaning was intended to attach to each word.’ ” (quoting *State ex rel. Pub. Disclosure Comm’n v. Rains*, 87 Wash.2d 626, 634, 555 P.2d 1368 (1976))).⁴ Here, the legislature chose to use the term “in a reckless manner” in the vehicular homicide and vehicular assault statutes and to use the term “reckless driving” in another.⁵ Because the legislature chose different terms, we must recognize that a different meaning was intended by each term.⁶

State v. Roggenkamp, 153 Wash. 2d 614, 625–26, 106 P.3d 196, 201–02 (2005) (footnotes omitted). See also, *Densley v. Dep’t of Ret. Sys.*, 162 Wash. 2d 210, 219, 173 P.3d 885, 889–90 (2007) (distinguishing “active federal service in the military or naval forces” from “service in the armed forces”).

NOTE: The trial court’s decision found that *support* was distinct from *expenses*, as is clear in its ruling, and there was no cross-appeal of that finding timely-filed for review by Shawn Blackburn.

3. Conclusion: The Statute of Limitations for “Expenses” is Distinct from the Statute of Limitations for “Support”

Shawn Blackburn seeks to conflate “expenses” and “support” so that he can compel the conclusion that the statute of limitations for reimbursement of expense overpayment falls under the child support statute of limitations.

However, that is the fundamental question of law to be determined on this appeal, as a matter of first impression.

C. Which Statute of Limitations Applies to Expenses?

This court will be the first appellate authority to determine the statute of limitations for reimbursements under RCW 26.19.080. Prior reimbursement cases did not raise the statute of limitations issue. See, e.g., *In re Marriage of Hawthorne*, 91 Wash. App. 965, 957 P.2d 1296 (1998), discussed, below. A few preliminary clarifications are required before the substantive discussion of the statute of limitations resumes.

1. First Preliminary Issue: RCW 26.19.080 is Not a “New Right”

In her Opening Brief, Shennen had cited the *Marriage of Stern* to the effect that 100% reimbursement was not compelled by RCW

26.19.080, and that the right of reimbursement was limited by equitable concerns:

This is why the *Stern* court said that reimbursement of overpaid expenses should be limited if reimbursement would cause hardship in the mother's home, or if the money had been spent on the child. *In re Marriage of Stern*, 68 Wash. App. 922, 932–33, 846 P.2d 1387, 1393–94 (1993). (NOTE: There was no allegation by Shawn that the money had not been spent by Shennen on the Blackburn's child, and there is no doubt that the mother's home faced financial hardship with all resources supporting the son in her home.)

Opening Brief of Estate of Shennen Goodyear-Blackburn at pp. 16-17.

In his Response Brief, at page 31, Shawn argues that the *Marriage of Stern* is inapplicable because the reimbursement issue in *Stern* “pre-dates the 1996 statutory reimbursement of expenses amendments.”

However, the court in *Marriage of Hawthorne*, a 1998 case (cited below), said that the statute created no new rights; instead, RCW 26.19.080 simply created new procedure.

Darlene Hawthorne sought reimbursement for payments made to Brent Hawthorne's new wife for a 35-month period, and was awarded a (presumably partial) reimbursement of \$3569.65, which was 35 months at \$101.99 per month. *In re Marriage of Hawthorne*, 91 Wash. App. 965, 966–67, 957 P.2d 1296, 1297 (1998).

Brent does not challenge any findings of fact (at least in the published portion of the opinion) and instead *Brent Hawthorne challenged the trial court's retroactive application* of the 1996 statute to 1993 to 1995 daycare payments.

The appellate court found the law remedial, and thus applicable retroactively, because it created no new rights (emphasis added):

Brent contends that the amendment to RCW 26.19.080 is not remedial because it “is patently apparent” that it creates a new substantive right for an obligor parent. But he cites to no case which stands for the proposition that there was no right to reimbursement for overpayment of a parent's contributory share of expenses under RCW 26.19.080(3) prior law. We recognize that, for public policy reasons, child support judgments are not treated in the same way as ordinary judgments. Thus, courts have refused to recognize an unconditional right of total recoupment of overpaid child support. But we have recognized that a limited right to reimbursement may exist under equitable common law principles in certain circumstances.⁸ Former RCW 26.19.080 contemplated that daycare and special child rearing expenses would be shared by the parents in the same proportion as the basic child support obligation.⁹ Where those expenses were anticipated but not incurred, therefore, a potential right to reimbursement would have existed depending on the equities of the parties' situation. Because RCW 26.19.080, as amended, does not create a new right of action but merely clarifies the procedures the obligor may use to recoup payments made for daycare expenses which are not incurred, it is a remedial statute. The trial court could therefore apply it retroactively.

In re Marriage of Hawthorne, 91 Wash. App. 965, 968–69, 957 P.2d

1296, 1298 (1998) (NOTE: The statute of limitations was not raised as a defense, nor were equitable defenses or laches).

Application of In re Marriage of Hawthorne: It is clear that *Stern* is still good law because RCW 26.19.080 merely created a procedure, not a new right. (NOTE: It is also clear that the *Hawthorne* court distinguishes expenses from support.) In sum, Shawn errs to assert that *Marriage of Stern* was superseded by the 1996 amendments to RCW 26.19.080.

2. Second Preliminary Point: Equitable Defenses Are More Broad Regarding Expense Reimbursement than in Child Support

Equitable issues will be discussed subsequently, but it is clear that equitable defenses to RCW 26.19.080 reimbursement remain intact, as well:

But nothing in RCW 26.19.080(3) prevents the party receiving the alleged overpayment from raising equitable defenses, including laches and equitable estoppel, as a bar to a request for mandatory reimbursement for overpaid day care costs under this statute.

In re Marriage of Barber, 106 Wash. App. 390, 398, 23 P.3d 1106, 1111 (2001).

Child support payments are treated differently:

Generally, child support payments become vested judgments as the installments become due. *Hartman v. Smith*, 100 Wash.2d 766, 768, 674 P.2d 176 (1984); *Schafer v. Schafer*, 95 Wash.2d 78, 80, 621 P.2d 721 (1980).

In re Marriage of Capetillo, 85 Wash. App. 311, 316, 932 P.2d 691, 694 (1997).

Application of *Marriage of Barber and Marriage of Capetillo*: The right of reimbursement under RCW 26.19.080 is a “softer” right than is the right to child support, and more likely to be subject to limitations of equity, how the funds were expended, and, ultimately, subject to the timely action of the parent seeking reimbursement.

3. Third Preliminary Point: Policy Issues

If a ten-year statute of limitations becomes the law declared by this court, there will be a “cottage industry” of requests for reimbursements.

Shawn makes light of these policy concerns, stating that obligee parents were somehow “on notice” of a matter of first impression.

Response Brief at p. 15.

RCW 26.19.080 has no statute of limitations within it, but raising an objection to overpayment surely must occur within a reasonable time. Two years is a reasonable time. The “warning” that Shawn believes, on his page 15, that all parents already had, simply never existed.

A flood of fundamentally unjust motions is sure to follow if the ten-year child support statute of limitations is applied to reimbursement for overpaid expenses.

On page 16 of his Response Brief, Shawn argues that bank records are available back six years, and therefore surely ten is not much more of a burden.

However, the reality is that people pay caregivers with cash and other funds that lack a recorded paper trail, and most parents rarely hold receipts beyond their tax year, let alone for a decade. Instead, many parents pay daycare informally, in the manner of Shennen. See, e.g., CP: S22-117 to 119.

4. Fourth and Final Preliminary Point: *Fairchild v. Davis*

The narrowness of *Fairchild v. Davis* cannot be over-stated. The case did not raise equitable defenses to reimbursement, and the case did not raise the statute of limitations question. *Fairchild v. Davis*, 148 Wash. App. 828, 207 P.3d 449 (2009), *as amended* (Apr. 28, 2009).

Shennen does not seek to reiterate her *Fairchild v. Davis* arguments here, but simply incorporates them, herein.

Fairchild v. Davis should be confined to its facts.

The only residual legal question of note from *Fairchild v. Davis* is this: Are the obligees, and therefore the trial courts, to be confined only to consider as evidence formal receipts and/or cancelled checks, or may trial courts exercise their discretion to accept testimony as to what was paid, and test the credibility of the testimony by the usual means at trial?

The *Fairchild v. Davis* dissent will be reiterated on that point (emphasis added):

The trial court thus did not err in accepting the mother's declaration about her recall of expenses paid.

Fairchild v. Davis, 148 Wash. App. 828, 835–36, 207 P.3d 449, 452–53 (2009), *as amended* (Apr. 28, 2009) (dissenting). Text of Footnote 1 (emphasis added):

While the original support order indicated the mother could be called upon to account for the day care expenses, nothing in that order requires the accounting to be made by specific types of records.

Fairchild v. Davis, 148 Wash. App. 828, 836, 207 P.3d 449, 453 (2009), *as amended* (Apr. 28, 2009) (dissenting).

Declared expenditures should be admissible, and be subject to rebuttal, as are all other contests of fact.

NOTE on Specific Requirement of Accounting in Fairchild: In the *Fairchild* cases it reads:

The support order states that Ms. Davis “may be required to submit an accounting of how the support is being spent.” Clerk's Papers at 7.

Fairchild v. Davis, 148 Wash. App. 828, 830, 207 P.3d 449, 450 (2009), *as amended* (Apr. 28, 2009). This specific language in Ms. Davis' order goes far beyond the generic language of the child support form order. Compare CP: S22-11.

Shawn mis-states the facts on page 15, and again on page 21, of his Response Brief when he equates this very specific, uniquely drawn,

provision in the *Fairchild v. Davis* case, with the general form language in the Blackburn child support order at CP: S22-11.

This inclusion of this very specific, and unique, language in the *Fairchild* CS Order is yet another reason to confine *Fairchild v. Davis* to its facts.

5. Which Statute of Limitations Should Apply to RCW 26.19.080?

Of the two most significant legal issues of first impression in this appeal, one is whether to apply for reimbursement of expenses RCW 4.16.130 (two years), the catch-all statute of limitations, or to apply RCW 4.16.020(3)(ten years), the child support statute of limitations.

RCW 4.16.020 reads, in relevant part (emphasis added):

4.16.020. Actions to be commenced within ten years--Exception

The period prescribed for the commencement of actions shall be as follows:

Within ten years...

(3) Of the eighteenth birthday of the youngest child named in the order for whom support is ordered for an action to collect past due child support that has accrued under an order entered after July 23, 1989, by any of the above-named courts or that has accrued under an administrative order as defined in RCW 74.20A.020(6), which is issued after July 23, 1989.

RCW 4.16.020(3) – A Closer Look: If RCW 4.16.020 is applied, then the following scenario could play out: Assume that a divorce occurred in the year 2000, and the custodial mother (the obligee) paid for daycare for an eight year-old child, a six year-old child, and a baby, until each child

was age 11. Presume the order of child support was entered in the divorce year of 2000, and presume the custodial mother collected the father's share of daycare until 2011 when the baby turned 11, and she collected on the oldest child until 2003, and on the middle child until 2005.

If RCW 4.16.020(3) were applied to the mother's expense expenditures, the father could wait until 2021 and then demand an accounting with receipts from the mother for all daycare costs, and be reimbursed going back all those years if the mother could not produce formal receipts. This would be fundamentally unjust and contrary to legislative intent.

All the wrong incentives are in place under this scenario, and a multitude of injustices is a near certainty.

RCW 4.16.130 is more reasonable to apply:

4.16.130. Action for relief not otherwise provided for

An action for relief not hereinbefore provided for, shall be commenced within two years after the cause of action shall have accrued.

RCW 4.16.130 – a Closer Look: If an obligor suspects that he is overpaying daycare, he should act expeditiously to make inquiry, demand proof, and note a hearing for reimbursement.

As a matter of law, if RCW 4.16.020(3) does not apply, then RCW 4.16.130 applies. Further, as a matter of equity and common sense, a two-year statute of limitations is appropriate to apply.

6. The Reimbursement Cap: Maximum Remedy under RCW

26.19.080(3) is One-Year of Child Support Credit

It is also an issue of first impression as to whether RCW 26.19.080(3) implies a substantive cap on the remedy of reimbursement for overpaid expenses.

RCW 26.19.080(3) reads as follows (emphasis added):

(3) Day care and special child rearing expenses, such as tuition and long-distance transportation costs to and from the parents for visitation purposes, are not included in the economic table. These expenses shall be shared by the parents in the same proportion as the basic child support obligation. If an obligor pays court or administratively ordered day care or special child rearing expenses that are not actually incurred, the obligee must reimburse the obligor for the overpayment if the overpayment amounts to at least twenty percent of the obligor's annual day care or special child rearing expenses. The obligor may institute an action in the superior court or file an application for an adjudicative hearing with the department of social and health services for reimbursement of day care and special child rearing expense overpayments that amount to twenty percent or more of the obligor's annual day care and special child rearing expenses. Any ordered overpayment reimbursement shall be applied first as an offset to child support arrearages of the obligor. If the obligor does not have child support arrearages, the reimbursement may be in the form of a direct reimbursement by the obligee or a credit against the obligor's future support payments. If the reimbursement is in the form of a credit against the obligor's future child support payments, the credit shall be spread equally over a twelve-month period. Absent agreement of the obligee,

nothing in this section entitles an obligor to pay more than his or her proportionate share of day care or other special child rearing expenses in advance and then deduct the overpayment from future support transfer payments.

Wash. Rev. Code Ann. § 26.19.080 (West). Shennen's legal argument bears repeating, from page 23 of her Opening Brief:

1. *Literal reading of 26.19.080(3) establishes a substantive maximum reimbursement:* Twelve months of future child support payments are the maximum that may be offset for reimbursement for overpaid expenses. (This would be \$1000 per month x 12 months, or \$12,000.)

DCS took this to be their maximum remedy (CP: S22-103 to S22-104) and this is why Shawn filed the Superior Court action. Shawn states this explicitly in his 9/7/18 Motion and declaration. (CP: S22-98 to S22-110.) However, there is no clear authority that a greater reimbursement is available from the Superior Court.

The legal question is: Did the Department of Child Support follow a substantive statutory limitation on relief? (Answer: Yes.)

2. *RCW 26.19.080(3) also provides guidance for laches, estoppel, and in support of the two-year statute of limitations:* RCW 26.19.080(3) contains a one-year limitation of foregone child-support as the maximum remedy of overpaid expenses; therefore, it implies a policy of not allowing a lengthy period of inaction from an obligor seeking recovery, and it limits the total reimbursement available for any overpaid expenses.

Policy and Issue of First Impression: The *Mattson* court summarized the goal of child support as preventing a sudden loss of the child's standard of living due to divorce (emphasis added):

Basic child support does not generally include daycare expenses; but the court has discretion to order necessary and reasonable expenses, shared in the proportion otherwise applicable to the parties' child support order. RCW 26.19.020, 26.19.080(3), (4); *In re Johnson-Skay*, 81 Wash.App. 202, 204,

913 P.2d 834 (1996). The statute does not define “daycare” expenses or provide guidelines for determining what types of expenses are “reasonable and necessary.” In the absence of such definition, we interpret the language consistently within the overall purpose of the statutory framework. *Anderson v. Morris*, 87 Wash.2d 706, 716, 558 P.2d 155 (1976).

The Legislature explained its intent for child support statutes in RCW 26.19.001.⁵ Child support is designed with the primary goal of preventing a harmful reduction in a child's standard of living, in the best interests of children whose parents are divorced. *In re Marriage of Oakes*, 71 Wash.App. 646, 649–50, 861 P.2d 1065 (1993). In light of this important legislative goal, we interpret the terms “necessary and reasonable expenses” and “daycare” in a manner that serves the best interests of children. *See also*, RCW 26.09.002 (“In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities.”)

Mattson v. Mattson, 95 Wash. App. 592, 599–600, 976 P.2d 157, 161–62 (1999). (NOTE: The *Mattson* court is also clear that child support is one thing, and that expenses are another.)

Conclusion as to Substantive Cap on Reimbursement: It would serve legislative policy to apply the two-year statute of limitations to actions for reimbursement of overpaid expenses, and then to limit that reimbursement to one-year of child support as a maximum cap on reimbursement.

III. RESIDUAL ISSUES AND CLARIFICATIONS

This section addresses some confusions and errors in Shawn Blackburn’s Response Brief, simply to protect Shennen from an

uncorrected error turning out to have a substantive importance that is not presently visible.

A. Court's Rulings on 12/7/18 re: Fraud Allegation Abandoned at Hearing and Shawn Never Appealing Daycare or the Decree

The court's written ruling of 3/6/19 superseded its oral rulings of 12/7/18, and contradicted the oral ruling in places; however, those rulings not superseded by the written ruling are sustained by their incorporation into the written rulings of 12/7/18 and of 3/6/19.

The following is from the 12/7/18 VRP at 72 to 74, and in the first section, the trial court is denying Shawn's motion to vacate the original order of child support from 2009, and the trial court is noting that Shawn never appealed the daycare determination made administratively by DCS:

(COURT)...To me, it's you don't void an order that's been around since 2009. It was there. He had an attorney in the decree when the decree was going from decree of legal separation to decree of dissolution. He had an attorney before it was entered. They should have had copies of these documents. He should have known, he knew this document existed. He perhaps couldn't afford representation, but then again, he retained an attorney for the legal, for the decree, for the vacation issues. So, he did know that the State was coming after him for daycare because the order, the agreement -- this letter sent to him was before the decree of dissolution was entered, the order converting. So, it's not a surprise.

I don't believe I, I can't just simply vacate an order I shouldn't have entered. It's been in there for nine years. It's not a void order. It's just something that has been relied upon -- so, it's too late for that.

The question is how far — so, now that we're talking about daycare, not otherwise incurred. Okay. So, now we're -- so, that's one issue about saying, well, there's no daycare. This whole thing's gone. Well, it's too late for that. The -- still enforceable. It might be voidable because he wasn't part of it, but he did by his, again, by his receiving these letters of \$300 a month for a while for daycare, \$650 a while for daycare, he didn't agree with them. Attorney, Ms. Rimov, says it's fraud, but the issue is it's there.

So, now we go back to the statute that says he has a right of reimbursement for daycare not otherwise incurred. So, we have reimbursement issues. So, what do we do with that? How far do we go back? Is this — there's issues on — Ms. Rimov's claiming the decree sets the, you know, judgment and decree is good for that period of time, good for ten years. I don't quite see it that way. Just because I didn't set \$650. That was say contested and dealt with administratively. No one appealed the administrative orders then, so we have a 2010 and 2012 order setting numbers. How do I redetermine those numbers now? It's like a collateral issue that could have been appealed administratively. It could have come back to me. It doesn't. So, I don't believe ten years is reasonable, is effective.

Question. What is the statute of limitations and, of course, if *laches* applies or not? So, ten years would be order — daycare determination was made. So, initially, is this a — then I hear that Ms. Rimov is claiming fraud. And as to that, what is the statute of limitations for fraud? I thought it was six. I'm just talking top of my head here.

MS. RIMOV: Well, your Honor, I wasn't claiming fraud as a technical argument. It was more as a feeling argument.

THE COURT: Feeling.

MS. RIMOV: I didn't plead --

THE COURT: The nine elements?

MS. RIMOV: -- fraud. I, it's this — yeah.

THE COURT: Okay.

Significance of the Court's Ruling: On page 16 of his Response Brief Shawn writes: "Fraud was at issue." However, fraud was never properly at issue, as Shawn's attorney (Ms. Rimov) conceded at hearing on 12/7/18.

The trial court is also clear that Shawn never appealed the final dissolution orders, nor did Shawn appeal the year 2009, 2010 and 2012 DCS daycare determination, noted in the quote, above.

B. Shawn's Attempt to Argue Equity on His Own Behalf

On page 16 of his Response Brief, Shawn raises the property issues from the decree has an equitable concern to himself; however, Shennen explained how she achieved the property, of which Shawn later became envious, in her 12/3/18 declaration:

9. **April 6, 2018 Letter of Ms. Rimov:** Ms. Rimov's letter of 4/6/18 does not mention the daycare payment issues. The 4217 E. 13th was the family home at issue. *Resubmitted 10/25/18 Declaration* at page 23.

10. **Other Houses Now in Trust for Owen:** I bought the house on 8825 E. Sugar Pine after the divorce. I got 2714 S. Cheryl Court and 1217 S. McKinsie Rd. in the divorce because Shawn was just going to let them go into foreclosure. I saved them and rented them out, and they are now in trust for our son.

CP: S22-318 (*Shennen's Declaration of 12/3/18 re: Shawn's 11/30/18 Motion*).

C. Trust for the Son (Owen Blackburn)

Shennen's Trust Instrument is at S22-165 to S22-175. Shawn mentions this trust at page 9 of his Response Brief, but Shawn is incorrect

about the age of distribution. It reads that distributions at age 21 are contingent upon successful college attendance; otherwise, the trust is maintained for the child (Owen) until Owen is 40.

There is no good reason for Shawn to take Owen's legacy.

D. Laches and Equitable Defenses

There is no cumulative argument here, as the Opening Brief was a sufficient argument. The questions of law include: At what point is sitting on your right of action a prejudice to the innocent party? At what point is sheer delay and passage of time prejudicial to the person seeking relief in equity?

E. Reasonable and Necessary Expenses Can Be Due to Medical Situations, Not Just for Work

The *Mattson* case, *supra*, is clear that childcare is for "reasonable and necessary" expenses and not just work-related care. *Mattson v. Mattson*, 95 Wash. App. 592, 599–600, 976 P.2d 157, 161–62 (1999).

Shawn and Shennen separated, in 2009, while she was first fighting her cancer. As her medical record states (CP: S22-182):

[Shennen] was originally diagnosed in 2009 with the right breast primary invasive ductal carcinoma high grade ER/PR positive, HER2-negative, had lumpectomy, sentinel lymph node biopsy, T2 N0 primary tumor. She had chemotherapy, finished radiation therapy, and really tolerated about a year some tamoxifen. She was then also found to have metastatic breast cancer diagnosed in

December 2014 and also is known to have BRCA1 mutation and ATM mutaton

And so it went, until her death shortly after this appeal was filed.

It is reasonable to assume that spousal maintenance might have been in order had there been a modification brought. It is reasonable to assume the agreements proffered by Shennen were made not to change the daycare payments. In any event, it is not reasonable to expect a person who fought cancer for 10 years to have daycare receipts going back ten years, on the facts of this case, for daycare provided as her health demands dictated.

F: No Final DCS Determination: DCS Dismissal

As Shennen mentioned in her Opening Brief, the trial court erred to call the DCS numbers “determined” as Shennen’s DCS appeal was still pending, and the DCS appeal then was dismissed, after the Order and Judgment of 3/6/19 that is the subject of this appeal. Although the dismissal has not yet been forwarded by Lincoln County, its Clerk’s Papers pagination has been provided, and it appears to be CP: S22 384-386, and it is expected to be forwarded to Division III in the near future.

G. Attorney’s Fees

As has been already shown, above, Shawn’s attempt to turn himself into the “obligee” should fail. The trial court made no finding of

bad faith on the part of Shennen, and that lack of finding, and the refusal of the trial court to order fees, was not cross-reviewed.

There is no basis to award fees to Shawn Blackburn from his son's Trust (the mother's estate), and Shawn's fee request is asked to be denied.

IV. CONCLUSION: REASONABLE RULES AND RELIEF

A. Rejection of Shawn's Unreasonable Re-Writing of the Law

Shawn Blackburn has presented some very unreasonable positions in his attempt to redefine himself as an "obligee" under Washington Child Support statutes. Clearly, Shawn hopes to become a creditor, and to make the Estate of Shennen a debtor, but any fulfillment of those hopes does not transform Shennen into an "obligor." The best Shawn can hope for is to make Shennen a "debtor-obligee."

Shawn had presented that unreasonable argument – of himself as "obligee" -- so that he could seek fees under RCW 26.18.160.

However, the trial court maintained Shennen as the obligee in all of its decisions, and the trial court made no bad faith finding regarding Shennen, and therefore the trial judge did not award fees to Shawn. The trial court also maintained the distinction between "support" and "expenses" throughout its decision.

Shawn did not seek cross-review under RAP 5.1(d), and without filing a cross-review, Shawn's arguments to re-write the law and facts of

the trial court's decision are inapt. See, e.g., *Kilbury v. Franklin Cty. ex rel. Bd. of Cty. Comm'rs*, 151 Wash. 2d 552, 562–63, 90 P.3d 1071, 1076–77 (2004) (filing of cross-review is a necessary predicate to taking up an issue not raised by the appellant). See also RAP 2.4.

The trial court made no finding of bad faith on the part of Shennen, and that absence of a finding of bad faith is a verity on appeal. See, e.g., *Young v. Toyota Motor Sales, U.S.A.*, 442 P.3d 5, 9 (Wash. Ct. App. Div.III 5/23/2019).

B. Reasonable Interpretation of Legislative Intent, Equity and Policy Values

There is no appellate authority determining the applicable statute of limitations for seeking reimbursements of obligor over-payments for expenses that were not “actually incurred” under RCW 26.19.080(3).

Given the statutory distinction between “support” and “expenses,” that distinction implies that the statute of limitations for the former would be distinct from the statute of limitations for the latter.

The two-year statute of limitations under RCW 4.16.130 should apply to expense reimbursements. And any reimbursements within that two-year period should still be subject to additional limitations by laches, equity, and the one-year support waiver as a substantive total dollar-value cap on reimbursements.

The obligee, as custodian of the child, should not be threatened with large reimbursements that the obligor allowed to accumulate by inaction and inattention to the care of the child. A two-year statute of limitations creates the correct incentives for the obligor, and a substantive cap of one-year of child support payments is a reasonable maximum reimbursement of the custodial parent to the non-custodial parent.

Shennen offered the following clear and predictable rule in the conclusion of her opening brief, and she offers it again:

RULE: A two-year statute of limitations applies procedurally for requesting reimbursement for overpayment of child expenses actually paid, and the reimbursement is substantively capped at no more than twelve months of the current or pending child support, whichever is lesser, and this rule of reimbursement is still also subject to equitable defenses for further reductions and limitations.

The court is asked to clarify the law, and the court is asked to adopt the just and equitable interpretation of the law, stated above.

Respectfully submitted,

9/2/19



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Division III No. 366707

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

**Estate of Shennen Goodyear-Blackburn (substituted for Shennen
Goodyear-Blackburn), Appellant**

v.

Shawn Blackburn, Respondent

DECLARATION OF SERVICE

I, Lori Mason, declare under penalty of perjury under the laws of
the State of Washington, that on September 2, 2019, I provided, via
electronic filing, a copy of Appellant's Reply Brief to the following:

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