

FILED  
Court of Appeals  
Division III  
State of Washington  
7/1/2019 1:18 PM

**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**

---

**OPENING BRIEF OF APPELLANT**

---

Craig Mason, WSBA#32962  
Attorney for Respondent  
W. 1707 Broadway  
Spokane, WA 99201  
509-443-3681  
masonlawcraig@gmail.com

| <u>TABLE OF CONTENTS</u>  | <u>Page</u> |
|---|-------------|
| TABLE OF AUTHORITIES  | iv          |
| I. INTRODUCTION   | 1           |
| A. Overview   | 1           |
| B. Statement of the Case: Citations to Record   | 2           |
| II. ISSUES ON APPEAL  | 6           |
| A. Issues of Law, and of Application of Law   | 6           |
| <i>Assignment of Error of Law #1 and Issue #1 – RCW 4.16.130:<br/>Child support falls under ten-year statute of limitations<br/>(RCW 4.16.020); however, expenses fall under<br/>the two-year statute of limitations (RCW 4.16.130), and<br/>the trial court erred to reimburse expenses back 10 years.</i> | 6           |
| <i>Assignment of Error of Law #2 and Issue # 2 – Laches:<br/>The trial court erred not to find sufficient prejudice to the<br/>mother on these facts to invoke laches.</i>  | 7           |
| <i>Assignment of Error of Law #3 and Issue #3 – Equitable Estoppel:<br/>The trial court erred not to find sufficient prejudice to the<br/>mother on these facts to invoke laches, and the trial court<br/>erred not to find the mother’s reliance sufficient to apply estoppel.</i>                         | 7           |
| Note on Statement of Error and Standard of Review   | 8           |
| B. Issues of Error as to Findings of the Trial Court:<br><b>Procedural Note re: 3/6/19 Order and Judgment</b><br><i>The trial court’s Order and Judgment of 3/6/19 wholly<br/>superseded the Order of 12/7/18 as to the statute of limitations issues.</i>  | 9           |
| C. Other Assignments of Error   | 9           |
| <i>Assignment of Error #4 – Agreements Between the Parties:<br/>The trial court erred to find no agreements between the parties.</i>  | 10          |

| <b>TABLE OF CONTENTS, cont.,</b>   | <b>Page</b> |
|--|-------------|
| <i>Assignment of Error #5: The Demand for 10 years of Receipts:<br/>The trial court erred to demand formal receipts or cancelled<br/>checks back ten years.</i>  | 10          |
| <i>Assignment of Error #6: The Error of Treating the DCS<br/>Preliminary Determination as Final:<br/>The DCS preliminary order was appealed by the mother<br/>and was dismissed DCS on 3/15/19. No final findings<br/>were ever made by DCS.</i> | 11          |
| <b>D. Standard of Review: De Novo on Questions of Law</b>  | 12          |
| <b>III. ARGUMENT</b>   | 12          |
| <b>A. Statute of Limitations: RCW 4.16.130 Should Apply<br/>to Requests for Reimbursement of Overpaid Expenses</b>   | 13          |
| <b>1. Policy Discussion:</b>   | 13          |
| <b>2. Child Support Obligations Become an Immediate Judgment:</b>  | 14          |
| <b>3. RCW 4.16.020(3) Clearly Applies Only to “Child Support”:</b>   | 14          |
| <b>4. The Legislature Intended Expenses and Support to Be Distinct<br/>Concepts:</b>   | 15          |
| <b>B. Laches and Overpaid Childcare Expenses: Implied Waiver</b>   | 17          |
| <i>Application of Laches as Implied Waiver:</i>  | 18          |
| <b>C. Equitable Estoppel: Reliance Interests</b>   | 19          |
| <i>Trial Court’s Refusal to Apply Equitable Estoppel or Laches<br/>– the Legal Definition of Prejudice:</i>  | 20          |
| <b>D. Does RCW 26.19.090 Imply a Substantive<br/>Statute of Limitations?</b>   | 22          |
| <b>E. The <i>Fairchild v Davis</i> Case: CS Order Specifically Required<br/>An “Accounting,” and Laches, Estoppel and the Statute of<br/>Limitations Were Never Raised in <i>Fairchild</i></b>   | 24          |

| <u>TABLE OF CONTENTS, cont.,</u>   | <u>Page</u> |
|--|-------------|
| <b>F. The <i>Fairchild v Davis</i> Case: The Dissent's Better Understanding</b>  | <b>27</b>   |
| <b>G. Agreements Between the Parties</b>   | <b>29</b>   |
| <b>IV. Conclusion: Most Reasonable Interpretation Applied Equitably</b>  | <b>30</b>   |
| <b>A. Harmonization of the Statutes</b>  | <b>30</b>   |
| <b>B. Burden of Proof and Burden of Production</b>   | <b>31</b>   |
| <b>C. Equitable Remedies</b>   | <b>31</b>   |
| <b>D. Conclusion: Rule and Application</b>   | <b>31</b>   |
| <i>The rule the court is asked to adopt in this un-determined area of law is as follows:</i>   |             |
| <b><i><u>RULE:</u> 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.</i></b> |             |
| <b><i><u>APPLICATION:</u> The Estate of Shennen Blackburn should reimburse Shawn Blackburn for two years of overpaid daycare, \$15,600 (\$650 x 24) which shall be reduced under RCW 26.19.080(3) to \$12,000 (\$1000 x 12), and then that amount should be reduced by other equitable defenses to reimbursement.</i></b>  |             |

**TABLE OF AUTHORITIES** **Page**

**STATUTES**

|               |                      |
|---------------|----------------------|
| RCW 4.16.020  | 5-6, 13-14           |
| RCW 4.16.130  | 1, 6-7, 13, 30, 32   |
| RCW 26.09.002 | 16                   |
| RCW 26.19.001 | 16                   |
| RCW 26.19.020 | 16                   |
| RCW 26.19.080 | 1, 16, 22-26, 30, 32 |
| RCW 26.19.090 | 22                   |

**CASES**

|   |               |
|---|---------------|
| <i>Anderson v. Morris</i> , 87 Wash.2d 706, 558 P.2d 155 (1976).  | 16            |
| <i>Buchanan v. Switzerland Gen. Ins. Co.</i> , 76 Wash. 2d 100, 455 P.2d 344 (1969).                        | 21            |
| <i>Densley v. Dep't of Ret. Sys.</i> , 162 Wash. 2d 210, 173 P.3d 885 (2007).                               | 15            |
| <i>Fairchild v. Davis</i> , 148 Wash. App. 828, 207 P.3d 449, (2009), as amended (Apr. 28, 2009).           | 13, 24-27, 31 |
| <i>Fairchild v. Davis</i> , 148 Wash. App. 828, 207 P.3d 449, (2009), as amended (Apr. 28, 2009) (DISSENT). | 27-28         |
| <i>Hegwine v. Longview Fibre Co.</i> , 162 Wash. 2d 340, 172 P.3d 688 (2007).                               | 8, 12         |
| <i>Hunter v. Hunter</i> , 52 Wash. App. 265, 758 P.2d 1019 (1988).  | 17, 19-20     |
| <i>In re Johnson-Skay</i> , 81 Wash.App. 202, 913 P.2d 834 (1996).  | 16, 28        |

| <b><u>TABLE OF AUTHORITIES</u></b>   | <b><u>Page</u></b> |
|--|--------------------|
| <i>In re Marriage of Barber</i> , 106 Wash. App. 390,<br>23 P.3d 1106 (2001).  | 17, 26             |
| <i>In re Marriage of Maccarone</i> , 54 Wash. App. 502,<br>774 P.2d 53 (1989).   | 14                 |
| <i>In re Marriage of Oakes</i> , 71 Wash.App. 646,<br>861 P.2d 1065 (1993).  | 16                 |
| <i>In re Marriage of Stern</i> , 68 Wash. App. 922,<br>846 P.2d 1387 (1993).   | 16-17, 28          |
| <i>Kim v. O'Sullivan</i> , 133 Wash. App. 557, 137 P.3d 61 (2006).   | 26                 |
| <i>Koenig v. City of Des Moines</i> , 158 Wash.2d 173,<br>142 P.3d 162 (2006) (citing <i>Roggenkamp</i> ,<br>153 Wash.2d at 625, 106 P.3d 196).  | 15                 |
| <i>Lopp v. Peninsula Sch. Dist. No. 401</i> , 90 Wash. 2d 754,<br>585 P.2d 801, 804 (1978);  | 17-18              |
| <i>Marsh v. Gen. Adjustment Bureau, Inc.</i> , 22 Wash. App. 933,<br>592 P.2d 676 (1979).  | 21                 |
| <i>Mattson v. Mattson</i> , 95 Wash. App. 592, 976 P.2d 157 (1999).  | 16                 |
| <i>Simpson Inv. Co. v. Dep't of Revenue</i> , 141 Wash.2d 139,<br>3 P.3d 741 (2000) (quoting <i>State ex rel. Pub. Disclosure<br/>Comm'n v. Rains</i> , 87 Wash.2d 626, 555 P.2d 1368 (1976)). | 15                 |
| <i>State v. Beaver</i> , 148 Wash.2d 338, 60 P.3d 586 (2002).  | 15                 |
| <i>State v. J.P.</i> , 149 Wash.2d 444, 69 P.3d 318 (2003).  | 12                 |
| <i>State v. Wentz</i> , 149 Wash.2d 342, 68 P.3d 282 (2003).   | 12                 |
| <i>Williams v. Tilaye</i> , 174 Wash. 2d 57, 272 P.3d 235 (2012).  | 12                 |

## I. INTRODUCTION

### A. Overview

The ESTATE of Shennen Goodyear-Blackburn has substituted for Shennen Goodyear-Blackburn as the Appellant in this case.

Nonetheless, as the litigation, up to the 3/6/19 decision on appeal, occurred while Shennen was alive, the parties shall be referenced by their first names. No disrespect is intended.

The case turns upon Shawn Blackburn asking the court to order reimbursement under RCW 26.19.080 for overpayment of daycare, and the trial court granting that order back ten years, minus any verified receipts for daycare. The child support was \$1000.00 per month and the daycare was \$650.00 per month. The ordered reimbursement was \$43,300.

Shennen argued that if reimbursement were to be granted, that the two-year catch-all statute of limitations, RCW 4.16.130, should apply. (The Department of Child Support is expected to file an amicus brief to this effect, as well.)

Shennen also argued that estoppel and laches should prevent Shawn's reimbursement. Finally, Shennen argued that her reliance upon other agreements that they had made should preclude reimbursement.

Shennen's requests were all denied.

This appeal timely followed.

**B. Statement of the Case: Citations to Record**

The parties' legal separation was finalized on 10/23/09. (CP: S22-1 to S22-36). The mother had primary placement of the child. (CP: S22-1 to S22-21) Child support was set at \$1000 per month. (CP: S22-9 to S22-16, esp. S22-11) The father was required to pay 100% of daycare. (CP: S22-13) which was later set administratively by DCS at \$650 per month. The decree of legal separation indicated that Shawn could continue to live in the home "until it is sold," and either party had the right to trigger sale, after which "the net proceeds [to be] distributed equally to the parties." (CP: S22-36)

Shawn brought a motion to convert the separation to a dissolution on 4/11/10. (CP: S22-37) Shawn then added a motion to vacate the decree of 10/23/09, as well. (CP: S22-38 to S43) There was more substantial maneuvering, part of which can be seen at CP: S22-44 to S22-92, leading Shawn to file another motion to convert the separation to a dissolution on 8/20/10. (CP: S22-93 to S22-94) An order on the decree of dissolution issued on 8/20/10. (CP: S22-95 to S22-97) The relevant modified term regarding the family home was that either party could purchase the home from the other, paying the other party one-half of the net equity after a professional appraisal. (CP: S22-97)

On 9/18/18, Shawn brought a motion for reimbursement of previously-paid daycare. (CP: S22-98 to S22-110) Shawn specifically sought an off-set against the home equity monies that he would otherwise owe Shennen to purchase the family home from her. (CP: S22-100, lines 15-17)

Shawn had brought a motion for reimbursement with the Department of Child Support; however, in its 6/26/18 order, the department of child support limited its remedy to one year (12 months) of credit against his future child support for the \$46,800 in daycare. (CP: S22-103&104).

Shennen appealed the DCS order on 6/27/18. (CP: S22-113) The matter was continued repeatedly (e.g., CP: S22-114) and the entire DCS matter was ultimately dismissed, as the order on appeal from the superior court superseded any administrative action in the matter. (The March 15, 2019 DCS order of dismissal without any final determination will be provided in supplemental clerk's papers by the time of Reply.)

Shennen also filed lengthy pro-se responses to Shawn's motion. (CP: S22-111 to S22-118, filed on 9/18/18, and S22-137 to S22-164, filed on 10/25/18) Upon his appearance, counsel for Shennen re-filed her 10/25/18 declaration with an organizing cover sheet. (CP: S22-202 to S22-231) Shennen also filed her memorandum of law against reimbursement,

citing the statute of limitations, laches, and equitable estoppel. (CP: S22-232 to S22-244) Shennen's filings, referenced above, also indicated various agreements and acts of reliance upon those agreements.

On 11/30/18, Shawn filed a "counter-motion" to vacate the original final child support order. (CP: S22-289 to S22-307)

Shennen's responsive declaration of 12/5/18 (CP: S22-316 to S22-327) included that Shawn knowingly waived any overpayment (CP: S22-320 at point 22(a)); that Shennen's \$3500 payment to Shawn was in reliance upon their 2016 agreement (CP: S22-320 at point 22(b)); that Shawn failed to pay \$1900 due under the decree (CP: S22-320 at point 22(c)); that Shawn failed to pay \$7423.86 in medical insurance costs (CP: S22-320 at point 22(d)); that in preparation for hearing another \$1500 was identified that Shawn had not paid (CP: S22-320 at point 22(g)); and that Shennen had provided daycare receipts for \$15,550 from 2012 through 2017 (CP: S22-321 at point 22(h)).

Shennen also submitted health records as to her pervasive cancer as an equitable consideration, e.g., CP: S22-308 to S22-315.

At hearing on 12/7/18, the court denied all motions to vacate, set reimbursement procedures, denied all laches and estoppel defenses, and reserved final determination pending additional filings, requiring

“receipts” back six years for daycare. The Order of 12/7/18 can be found at CP: S22-340 to S22-341.

There were some additional filings, such as Shennen’s request for more time to find receipts due to her health (CP: S22-343 to S22-354), but she ultimately had no ability to exert the effort to find more receipts, and she died a short time after the trial court’s judgment and order of 3/6/19, at CP: S22-370 to S22-374, which superseded the Order of 12/7/18 by imposing the ten-year statute of limitations now at issue.

At Point 3.5 in the findings in the Order of 12/7/18, the court cited RCW 4.16.020 generally for the 10-year statute of limitations, but the language cited is clearly from RCW 4.16.020(3), which reads that the ten-year statute of limitations applies to support actions brought (emphasis added):

[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.

The trial court then erroneously stated that DCS “*had determined*” that child support was overpaid by \$46,800 (this was error, as no final finding had been made by DCS); next, the trial court subtracted \$3,500 that Shennen paid to Shawn by check (and that Shennen had

testified had been paid under an agreement upon which she relied), and the trial court found Shennen's reimbursement owing to Shawn to be \$43,300. (CP: S22-373) This amount was reduced to a judgment in the same document. (CP: S22-374)

This appeal timely followed. (Shennen died and her Estate was substituted in both courts.)

## **II. ISSUES ON APPEAL**

### **A. Issues of Law, and of Application of Law**

*Assignment of Error of Law #1 and Issue #1 – RCW 4.16.130:* If daycare payments are made in excess of daycare paid, and if a refund is actually due to the obligor, which statute of limitations should apply, the child support ten-year statute of limitations (RCW 4.16.020), or are expenses like daycare distinct from child support, and therefore subject to the two-year statute of limitations (RCW 4.16.130)? (Answer: The two-year statute of limitations should apply, in that if the legislature had intended to treat all payments as child support, they would not have distinguished *expenses* from child *support* in support orders. Therefore it is most consistent with legislative intent and good policy to apply the two-year, catch-all, statute of limitations, RCW 4.16.130, to the overpayment of expenses back from the date of request for reimbursement.)

Restatement of the issue: It was an error of law for the trial court not to

apply the two-year statute of limitations to reimbursements of overpaid daycare.

***Assignment of Error of Law #2 and Issue # 2 – Laches:*** Apart from RCW 4.16.130, is laches an appropriate doctrine on which to deny Shawn Blackburn recovery for allegedly overpaid daycare expenses? (Answer: Yes, laches should apply. Shawn had knowledge of the payment of daycare while the child was not in daycare, and he took no action to stop the payments; for Shawn to hail Shennen to court after all these years of inaction is sufficient prejudice and damage in and of itself to warrant the application of laches.) Restatement of the issue: The trial court erred not to find prejudice to Shennen from Shawn’s actions sufficient to invoke the application of laches; it is the trial court’s legal interpretation of “prejudice” that is at issue, and not the application of law to fact.

***Assignment of Error of Law #3 and Issue #3 – Equitable Estoppel:*** Should the court have applied equitable estoppel to bar Shawn’s claim against Shennen? (Answer: Yes. Shawn behaved inconsistently with his later claim, and Shennen forbore from modifying support and other actions in reliance upon Shawn’s pattern of behavior, and Shennen was prejudiced by Shawn inducing her reliance upon his representations that he would continue to make the court-ordered daycare payment.)

Restatement of the issue: The trial court erred not to find prejudice to

Shennen from Shawn's actions, and Shennen's reliance upon Shawn's representations, sufficient to invoke the application of the doctrine of equitable estoppel; this was an error of law (the court's formulation of the concepts of prejudice and reliance), and the trial court's error was not simply an error of application of law to fact.

NOTE ON STATEMENT OF ERROR AND STANDARD OF REVIEW:

To the extent that error is identified, and to the extent that it is a mixed question of law and fact, or is an error of fact obscured within a conclusion of law, it is challenged for substantial evidence in this appeal:

A trial court's findings of fact are reviewed for substantial evidence. *In re Estate of Jones*, 152 Wash.2d 1, 8, 93 P.3d 147 (2004). Substantial evidence to support a finding of fact exists where there is sufficient evidence in the record "to persuade a rational, fair-minded person of the truth of the finding." *Id.* A finding of fact misidentified as a conclusion of law will be treated as a finding of fact. *State v. Kilburn*, 151 Wash.2d 36, 52, 84 P.3d 1215 (2004). A trial court's findings of fact must justify its conclusions of law. *Dumas v. Gagner*, 137 Wash.2d 268, 280, 971 P.2d 17 (1999). "Questions of law and conclusions of law are reviewed de novo." *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wash.2d 873, 880, 73 P.3d 369 (2003).

*Hegwine v. Longview Fibre Co.*, 162 Wash. 2d 340, 352–53, 172 P.3d 688, 695 (2007).

/

/

**B. Issues of Error as to Findings of the Trial Court: Procedural Note:**

**3/6/19 Order and Judgment**

As a procedural note: (a) The 3/6/19 Order and Judgment contained rulings that partially contradicted, and therefore superseded, the Order of 12/7/18. (b) The Order of 12/7/18 established the procedure for the final determination contained in the Order and Judgment of 3/6/19. (c) The Order and Judgment of 3/6/19 summarized the court's understanding and modifications of its rulings on 12/7/18 in "Part II, Background/Proceedings." (d) Because of these subsequent modifications by the court on 3/6/19, the Order of 12/7/18, and the 12/7/18 oral rulings, will be treated as inferior to the Order and Judgment of 3/6/19 for expressing the decision of the trial court. (e) In short, the Order of 12/7/18 and its incorporated oral ruling will be relied upon only as to the trial court's reasoning as to the doctrines of estoppel and laches, while the court's other findings and statute of limitations determinations in the Order and Judgment of 3/6/19 are seen as wholly superseding the Order of 12/7/18.

**C. Other Assignments of Error**

With that background, Shennen presents her other assignments of error.

***Assignment of Error #4 – Agreements Between the Parties:*** The trial court correctly found that Shennen had paid Shawn \$3500 (Order and Judgment of 3/9/19 at Point 3.6); however, the trial court erred in the inference that there were no agreements between Shawn and Shennen, presented essentially as a finding of fact at Point 2.6 of the Order and Judgment of 3/9/19.

***Issue #4 Related to Error #4:*** The existence of the agreements between the parties relate to the laches and equitable estoppel arguments, as well as to the possible fact of a contract itself. Substantial evidence does not support the court's refusal to consider agreements between the parties, nor should the trial court have refused to consider Shennen foregoing contempt motions and foregoing requests to modify maintenance.

***Assignment of Error #5: The Demand for 10 years of Receipts:*** The two-year statute of limitations on demands for refunds of expenses is a reasonable interpretation of the statutory scheme. The trial court's competing position – a 10 year statute of limitations -- is manifestly unreasonable. It is not reasonable to imagine that any normal obligee parent will have proof of daycare payments going back a decade.

***Issue #5.1 Related to Error #5:*** Is it manifestly unreasonable to subject obligee parents (e.g. Shennen) to a demand from an obligor (e.g. Shawn) for a refund of a decade of child daycare expenses, unless the obligor is

provided with receipts that go back 10-years? (Answer: Yes, it is a manifestly unreasonable demand that will incite unjust reimbursements.)

*Issue #5.2 Related to Error #5:* The findings of facts are deeply intertwined in this case with the errors of law. For example, when the court states in Point 3.6 that Shennen should reimburse “all the daycare costs not actually incurred,” it becomes a factual question as to what was “actually incurred.” However, the court’s legal standard of “actually incurred” is one that demands formal receipts, as opposed to sworn and declared testimony, informal receipts, etc. Hence, while Shennen denies that the court has substantial evidence to make this finding, the gist of the assignment of error is really a vital question of law – *the proper standard of measurement of “actually incurred.”* That standard – articulated by the trial court as copies of ten-year old formal receipts – is really a question of law, as well as a matter of whether substantial evidence exists under the standard applied by the trial court. This appeal should determine a more reasonable standard of proof of expenses “actually incurred.”

***Assignment of Error #6: The Error of Treating the DCS Determination as Final:*** In Point 3.6 of the Order and Judgment of 3/9/19, the trial court states that “DCS had determined....” However, Shennen had appealed the DCS calculation, and that DCS appeal was still pending, and then was ultimately dismissed by the agency without resolution on 3/15/19. Again,

this is both an error of law, and a factual finding that lacks substantial evidence.

*Issue 1.1 Related to Error #6:* There was no substantial evidence for the court finding that DCS “found” as the preliminary determination was appealed, and then the appeal was dismissed by DCS on 3/15/19.

*Issue 1.2 Related to Error #6:* As a matter of law, child-related “expenses” are not “child support.”

#### **D. Standard of Review: De Novo on Questions of Law**

As was noted, above, questions of law are reviewed de novo.

*Hegwine v. Longview Fibre Co.*, 162 Wash. 2d 340, 352–53, 172 P.3d 688, 695 (2007). Statutory interpretation is also de novo review on appeal:

Statutory interpretation is a question of law reviewed de novo. *State v. Wentz*, 149 Wash.2d 342, 346, 68 P.3d 282 (2003). Interpreting statutes requires the court to discern and implement the legislature's intent. *State v. J.P.*, 149 Wash.2d 444, 450, 69 P.3d 318 (2003).

*Williams v. Tilaye*, 174 Wash. 2d 57, 61, 272 P.3d 235, 237 (2012).

The implications of distinguishing “support” from “expenses” for the child support regime, and for the statute of limitations in particular, should be articulated by the decision in this appeal.

### **III. ARGUMENT**

The assignments of error, above, will be addressed in the same order, below, in argument:

**A. Statute of Limitations: RCW 4.16.130 Should Apply to Requests for Reimbursement of Overpaid Expenses**

The most important question for the court to decide is which statute of limitations applies to requests for refunds of alleged overpayments of expenses for the child.

RCW 4.16.020(3) on its face applies to *child support*, not to reimbursement for overpaid *expenses*. If RCW 4.16.020(3) does not apply to allegations of overpaid *expenses*, then the “catchall” statute of limitations of two years applies to requests for reimbursement under RCW 4.16.130.

There is no appellate authority on this issue.

**1. Policy Discussion:** The court should take judicial notice of the fact that no reasonable parent is going to keep receipts for ten years of back childcare expenses. (And, certainly, no obligee parents, to-date, have been put on notice to this effect, unlike the mother in the *Fairchild* case, discussed below, in which the final orders specifically warned of an “accounting” requirement.) The custodial parent is paying for the child, and caring for the child, on a daily basis, and such a parent currently has no reason to suspect that the obligor parent will suddenly appear and demand a refund for all expenses that lack a receipt back a decade. An appellate decision that did grant a right to a ten-year refund for all un-

receipted expenses would suddenly create a cottage industry of family law actions generating unjust obligations, with obligee parents suddenly owing tens of thousands of dollars to the non-custodial, obligor, parent.

**2. Child Support Obligations Become an Immediate Judgment:** Child support payments have a uniquely long statute of limitations, akin to that of other judgments, precisely because *a past-due child support payment is a judgment* against the obligor:

Each installment of unpaid child support becomes a separate judgment and bears interest from the due date. *Roberts v. Roberts*, 69 Wash.2d 863, 866, 420 P.2d 864 (1966). Any arrearage not collected within the statutory limitation period is barred. *Roberts*, at 866, 420 P.2d 864. The appropriate limitation period here is 10 years. RCW 4.16.020(2); *In re Marriage of Ulm*, 39 Wash.App. 342, 344, 693 P.2d 181 (1984).

*In re Marriage of Maccarone*, 54 Wash. App. 502, 504, 774 P.2d 53, 55 (1989) (NOTE: Presumably the court quoted above meant sub-part RCW 4.16.020(3), not (2).)

**3. RCW 4.16.020(3) Clearly Applies Only to “Child Support”:** The statute reads (emphasis added):

(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.

Wash. Rev. Code Ann. § 4.16.020(3) (West).

Clearly “action to collect past due child support” also modifies “or that has accrued under an administrative order.” Therefore, the trial court’s Finding 3.6 on page 4 of 6 of the Order and Judgment of 3/6/19 is legally erroneous to apply the statute to daycare expenses, versus support. (And recall the factual error as to the finality of the DCS tentative determination that was appealed and then dismissed on 3/15/19 without resolution within the agency.)

#### **4. The Legislature Intended *Expenses* and *Support* to Be Distinct**

**Concepts:** The legislature clearly used “child support” and child-related “expenses” in different ways, and they are distinct statutory terms. As the court said in *Densley v. Dep’t of Ret. Sys.* (emphasis added):

When the legislature uses two different terms in the same statute, courts presume the legislature intends the terms to have different meanings. *Koenig v. City of Des Moines*, 158 Wash.2d 173, 182, 142 P.3d 162 (2006) (citing *Roggenkamp*, 153 Wash.2d at 625, 106 P.3d 196); see also *State v. Beaver*, 148 Wash.2d 338, 343, 60 P.3d 586 (2002) (“When 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))).

*Densley v. Dep’t of Ret. Sys.*, 162 Wash. 2d 210, 219, 173 P.3d 885, 889–90 (2007).

That child support is one thing, and that expenses are another, was made very clear in 1999 in *Mattson v. Mattson* (emphasis added as to legislative intent):

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.<sup>5</sup> 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). Compare Shennen’s argument at CP: S22-318.

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.)

This court is asked to provide a published appellate decision that determines that the statute of limitations for overpayment of childcare expenses be limited to two years.

**B. Laches and Overpaid Childcare Expenses: Implied Waiver**

The court summarized laches applied to overpayments in the case of *In re Marriage of Barber*, 106 Wash. App. 390, 23 P.3d 1106 (2001):

“Laches is an extraordinary remedy to prevent injustice and hardship and should not be employed as ‘a mere artificial excuse for denying to a litigant that which ... he is fairly entitled to receive....’ ” *Brost*, 37 Wash.App. at 376, 680 P.2d 453 (quoting *Crodle*, 99 Wash. at 131, 168 P. 986). To prevail on her argument that the doctrine of laches prevents Brian from seeking reimbursement of overpayment of day care expenses, on remand Sally must establish that (1) Brian had knowledge of the facts constituting a cause of action or a reasonable opportunity to discover such facts;<sup>5</sup> (2) there was an unreasonable delay in commencing the action; and (3) the delay damaged her. *See Hunter*, 52 Wash.App. at 270, 758 P.2d 1019.

*In re Marriage of Barber*, 106 Wash. App. 390, 396–97, 23 P.3d 1106, 1110–11 (2001).

“Laches is an implied waiver arising from knowledge of existing conditions and acquiescence in them.” *Lopp v. Peninsula Sch. Dist. No.*

401, 90 Wash. 2d 754, 759, 585 P.2d 801, 804 (1978), citing *Buell v.*

*Bremerton*, 80 Wash.2d 518, 522, 495 P.2d 1358, 1361 (1972).

**Application of Laches as Implied Waiver:** Shennen submitted extensive communication over a period of years testifying to Shawn’s knowledge of “overpayment,” and showing Shawn’s acquiescence in the payments. It would be prejudicial and fundamentally unjust to require formal receipts for daycare going back 10 years. Informal receipts were submitted. Many mothers pay individuals to care for their children, and likely no one has receipts beyond a few months.

It would be a policy shock to the entire statutory regime meant to protect the financial welfare of children if suddenly an obligor could demand ten-years’ worth of receipts or win a ten-year reimbursement from the courts. This public interest concern should apply to statutory interpretation and to equitable relief, as, for example, public interest mattered in the following laches decision in *Lopp v. Peninsula Sch. Dist.*:

We think that appellant's suit has more potential for harm to the public interest than good. Therefore, we hold that appellant's suit is barred by laches.

*Lopp v. Peninsula Sch. Dist. No. 401*, 90 Wash. 2d 754, 761–62, 585 P.2d 801, 805 (1978). The legislative intent could not be to allow an obligor to lie in wait for ten years, and then suddenly ambush the custodial parent with an exorbitant demand for reimbursement.

Child support is always a fixed and known amount each month, and support is a judgment immediately when due. Expenses vary month to month, and an expenses reimbursement is inchoate until requested and then determined. A ten-year statute of limitations is patently unreasonable in for expenses reimbursements, and to treat expenses similar to support is an error of law contrary to legislative intent.

In this case, Shawn, the obligor, knowingly sat on his hands until he decided that he did not want to disgorge the one-half of equity in the community home that was awarded to Shennen in the dissolution decree.

The court is asked to apply laches to bar Shawn Blackburn's attempt to avoid payment of Shennen's share of the community home to her Estate (held on behalf of their son).

### **C. Equitable Estoppel: Reliance Interests**

The doctrine of equitable estoppel also should have been applied to protect Shennen from an unreasonable demand for reimbursement of "over-paid" childcare. The elements of the doctrine are summarized in *Hunter v. Hunter*:

The doctrine of equitable estoppel is applicable when a person, by her acts or representations, causes another to change his position to his detriment. In such a case, the person who performs such acts or makes such representations will be precluded from asserting to her own advantage the conduct or forbearance of the other party. *Hartman*, 100 Wash.2d at 769, 674 P.2d 176 (quoting *Dickson v. United States Fid. & Guar.*

*Co.*, 77 Wash.2d 785, 788, 466 P.2d 515 (1970)). The party who asserts equitable estoppel must establish:

(1) an admission, statement, or act inconsistent with the claim afterward asserted; (2) action by the other party on the faith of such admission, statement, or act; and (3) injury resulting from allowing the first party to contradict or repudiate [such admission, statement, or act].

*Roy v. Cunningham*, 46 Wash.App. 409, 415, 731 P.2d 526 (1986), *review denied*, 108 Wash.2d 1018 (1987).

*Hunter v. Hunter*, 52 Wash. App. 265, 271–72, 758 P.2d 1019, 1023–24 (1988).

**Trial Court’s Refusal to Apply Equitable Estoppel or Laches – the**

**Legal Definition of Prejudice:** The trial court was convinced that the sheer passage of time (and inevitable loss of records, etc.) were not sufficient prejudice to invoke equitable relief, and the trial court rejected any other form of prejudice presented by Shennen. It appears that the trial court accepted all elements of both laches and equitable estoppel were present in this case, except for prejudice. (E.g., 12/7/18 VRP: 38, lines 18-24; and VRP: 85, lines 3-4)

NOTE: these findings regarding laches and estoppel were only stated in the Transcript of 12/7/18. Regarding the statute of limitations and other topics, the written Order and Judgment of 3/6/19 clearly superseded the oral findings, oral rulings and written Order of 12/7/18; for example, the VRP of 12/7/18 and the Order of 12/7/18 set a six-year statute of

limitations, and that was clearly superseded by the court's 10 year statute of limitations decision in the Order and Judgment of 3/6/19.

As a final comment on the error of not applying equitable relief (laches and estoppel) due to trial court's finding of a lack of prejudice, compare: (1) Shennen's statement of reliance in that she forewent seeking additional spousal maintenance in reliance upon the daycare payment being made. CP: S22-320. The trial court was aware of the spousal maintenance issue. See, e.g, VRP: 85, lines 3-8. (2) Shennen also forewent filing contempt on the other unpaid medical costs (see CP: S22-320 and VRP: 38). The court rejected that foregoing filing a contempt could be a reliance interest to which prejudice could be attributed. VRP: 38, lines 18-24

The trial court's definition of prejudice appears to be an error of law. See, e.g, *Marsh v. Gen. Adjustment Bureau, Inc.*:

Estoppel by operation of law arises where the acts or statements of the defendant or his agent induce the plaintiff, in reasonable reliance, to act or forbear to act to his prejudice. *Buchanan v. Switzerland Gen. Ins. Co.*, 76 Wash.2d 100, 108, 455 P.2d 344 (1969).

*Marsh v. Gen. Adjustment Bureau, Inc.*, 22 Wash. App. 933, 935, 592 P.2d 676, 678 (1979), and see *Buchanan v. Switzerland Gen. Ins. Co.*, 76 Wash. 2d 100, 109, 455 P.2d 344, 349-50 (1969).

Shawn Blackburn induced prejudicial reliance in Shennen Goodyear-Blackburn by his agreements to keep paying “daycare expenses” that he knew were not going to daycare.

**D. Does RCW 26.19.090 Imply a Substantive Statute of Limitations?**

RCW 26.19.090(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).

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.

Shennen understands that the law is not fully developed by appellate decisions in this area; however, judicial notice can be taken of the facts from the flood of family law cases that pass through the court of appeals. A ten-year statute of limitations for reimbursement is

unreasonable, especially with rigorous documentation requirements. Even applying a two-year statute of limitations, the types of proof required to show payments should be suitable to the real lives of time-pressured, and otherwise beleaguered, parents.

**E. The *Fairchild v Davis* Case: CS Order Specifically Required An “Accounting,” and Laches, Estoppel and the Statute of Limitations Were Never Raised in *Fairchild***

The first case to address the definition of “actually incurred” expenses under RCW 26.19.080(3) was the 2009 Division III case, *Fairchild v. Davis*, which reversed the trial court’s denial of reimbursement. However, the *Fairchild v. Davis* case is unique for several reasons.

1. *The Court Was Construing the Decree That Required “Accounting”:*

The *Fairchild v. Davis* child support order actually included the language that Ms. Davis would have to be prepared to provide Mr. Fairchild an accounting. (See case quote, below.) That condition does not apply to the Blackburn child support order, and in that sense, the *Fairchild v. Davis* court was construing a decree, not the statute. Aspects of *Fairchild v. Davis* should be re-addressed on solely statutory terms, and any unclarity in the law should be corrected on terms of the wise dissent in the *Fairchild* case.

Here is how *Fairchild v. Davis* addressed the issue of proof of actually incurring expenses amidst the conflation of the statute with the specific, written, requirement of accounting in the decree (emphasis added):

... Washington courts have not addressed the necessary proof to establish “actually incurred” expenses under RCW 26.19.080(3).

By comparison, adequate proof to order restitution for future expenses requires more than a victim's estimate of a future expense. *State v. Vinyard*, 50 Wash.App. 888, 892, 751 P.2d 339 (1988). Likewise, damages must be supported by competent evidence in the record. To be competent, the evidence or proof of damages must be established by a reasonable basis and it must not subject the trier of fact to mere conjecture. *ESCA Corp. v. KPMG Peat Marwick*, 86 Wash.App. 628, 639, 939 P.2d 1228 (1997), *aff'd*, 135 Wash.2d 820, 959 P.2d 651 (1998). The proof of damages must not be speculative or self-serving. *Id.* Furthermore, proof of special damages requires a “witness who evidences sufficient knowledge and experience respecting the type of service rendered and the reasonable value thereof.” *Kennedy v. Monroe*, 15 Wash.App. 39, 49, 547 P.2d 899 (1976).

Here, Ms. Davis has failed to provide adequate proof of actually incurred expenses. Regarding day care expenses, she merely provides her declaration. This is inadequate for many reasons. First, the declaration is self-serving without proof of actual expenses paid. Cancelled checks, prior tax returns, or declarations from child-care providers would have been more helpful. Second, Ms. Davis was notified in the support order that she may be required to submit an accounting. And, third, requiring proof is reasonable to show she paid \$400 a month in child care expenses in 2001, given the children's ages. Regarding medical expenses, she provides a health insurance premium statement from 2000 to 2007 and an orthodontist statement. She does not detail copayments or other medical expenses and does not show she actually incurred medical expenses during the support-ordered period.

*Fairchild v. Davis*, 148 Wash. App. 828, 832–33, 207 P.3d 449, 451 (2009), *as amended* (Apr. 28, 2009).

The court in *Fairchild v. Davis* shifted the burden of proof from the obligor who brought the action to the obligee.

The case cited by the *Fairchild v. Davis* court -- *Kim v. O'Sullivan* -- was a legal malpractice case in which the person bringing the suit had to show proof of damages, and the trial court had dismissed the legal malpractice complaint because any judgment that might have been won was uncollectible. *Kim v. O'Sullivan*, 133 Wash. App. 557, 564, 137 P.3d 61, 65 (2006). Nothing in the *Kim v. O'Sullivan* case shifted the burden of proof. The dissent in *Fairchild v. Davis* better understood the situation, as will be addressed, below.

2. *Ms. Davis, in Fairchild v. Davis, Never Raised Laches or Equitable*

*Estoppel*: Unlike the present Blackburn case, in *Fairchild v. Davis*, Ms. Davis never raised Laches or Equitable Estoppel (emphasis added):

Mr. Fairchild next claims the equitable defenses of laches and equitable estoppel do not apply. Since Ms. Davis does not raise these defenses, we decline to address them. Nevertheless, Division Two of this court held, “[N]othing 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 (2001).

*Fairchild v. Davis*, 148 Wash. App. 828, 833, 207 P.3d 449, 451 (2009), as amended (Apr. 28, 2009).

3. *The Statute of Limitations Issue Was Also Never Raised in*

*Fairchild v. Davis*: The statute of limitations issue was also never raised in the *Fairchild v. Davis* case.

**F. The *Fairchild v Davis* Case: The Dissent’s Better Understanding**

Even though *Fairchild v. Davis* is of limited precedential value to the Blackburn facts, given all of the differences listed above, this Blackburn court will be making law as to: (a) the statute of limitations and equitable limitations on reimbursement of expenses, and (b) what proof of expenses is required when no child support order specifies that an “accounting” might be required (and was the burden-shifting of *Fairchild v. Davis* unique to that case due to its decree)?

The dissent in *Fairchild v. Davis* wrote (emphasis added):

Even if the statutory reimbursement provision had been properly invoked, the trial court also should still be affirmed on its laches theory. It simply is not reasonable, as the trial judge recognized in her ruling on the revision motion, for the father to pop up after 15 years and fault the mother for not having kept detailed records of day care expenses dating to the George H.W. Bush administration. Under those circumstances, the trial court certainly had the discretion to consider the mother's best recollections of what was paid and when.<sup>1</sup> If the father could seek equitable consideration from the trial court, the mother could as well. The question is not whether Ms. Davis argued laches in this court. The question is whether she argued the theory in the trial court. She did—and the trial judge found the argument

compelling. 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).

The dissent has the better of the arguments, and this court is asked to determine the statute of limitations, to determine the burden of proof and production, and to set the scope of laches and estoppel in such cases. See *In re Marriage of Stern*, 68 Wash. App. 922, 932–33, 846 P.2d 1387, 1393–94 (1993) (whether funds were spent on the child should be equitably considered in a reimbursement action). And see *In re Johnson-Skay*, 81 Wash.App. 202, 913 P.2d 834 (1996) (Where ex-wife, a licensed day-care provider, provided day-care services for her own child and was thus precluded from accepting additional clients, trial court could consider the lost income as day-care expense when computing child support – NOTE: This lost income was estimated and not “receipted”).

The Blackburn trial court decision, on appeal in this case, if upheld, would create a “cottage industry” in the demand for 10-year-old receipts, and subsequent requirements of reimbursement, setting the stage for a widespread pattern of grossly unjust demands for reimbursement.

It is implausible that a parent is so out-of-touch with their children’s lives that they do not know the child is not in daycare for a year. If they know, or can be presumed to know, then they are waiving reimbursement. There should be a reasonable equitable limit on how far back in time the obligors can project their mock-astonishment that some daycare funds were not “actually incurred,” as expenses.

#### **G. Agreements Between the Parties**

The evidence of various agreements between the parties might well rise to contracts by reliance or by estoppel. However, more importantly, they show that Shawn Blackburn had knowledge of his “overpayment” of daycare, and Shawn did not move for modification, and therefore should be found to have waived reimbursement (or should be equitably estopped from seeking reimbursement), based on authorities and facts from the case, cited, above.

/

/

/

#### **IV. Conclusion: Most Reasonable Interpretation Applied Equitably**

There is no appellate interpretation of the applicable statute of limitations to be applied to reimbursements of obligor payments for expenses not “actually incurred” under RCW 26.19.080(3).

The statutory distinction between “support” and “expenses” implies that the statute of limitations for the former would be distinct from the statute of limitations for the latter. And, therefore, the two-year statute of limitations under RCW 4.16.130 should apply.

##### **A. Harmonization of the Statutes**

In this case, there was \$1000.00 per month in child support, and there were also the \$650 per month in daycare charges at issue. Back two years for overpaid daycare, under RCW 4.16.130, would be a **\$15,600.00** reimbursement. ( $\$650 \times 24 \text{ months} = \$15,600.$ )

If RCW 26.19.080(3) is a substantive limitation on reimbursement – limiting reimbursement to a credit of one year against future child support – then in the case the substantive limitation on reimbursement would be \$12,000. ( $\$1000 \text{ per month} \times 12 \text{ months} = \$12,000.$ )

The following statement of the law seems most reasonable from a policy, statutory and equitable position: *A two-year statute of limitations applies procedurally for requesting reimbursement, and the*

*reimbursement is substantively limited to a total reimbursement owing of no more than twelve months of child support.*

### **B. Burden of Proof and Burden of Production**

The burden of proof should remain on the party seeking the reimbursement. It is the obligor's cause of action, and the obligor should carry the burden. The burden of production should be clarified as to the obligee's duties to keep records.

Unrealistic record-keeping demands should not be mandatory, nor should a certain form of evidence about "actually incurred" expenses determine the matter *a priori*, as the quality of evidence can be determined by the finder of fact. A particular form of "accounting" can always be specified in a decree as in *Fairchild v. Davis*, above, but any interpretation of the statutory requirement should be reasonable.

### **C. Equitable Remedies**

Even within the two-year procedural limitation, and within the substantive limitation of one-year of child support waiver, there should still be room for laches, equitable estoppel, and equitable waiver of reimbursement.

### **D. Conclusion: Rule and Application**

The rule the court is asked to adopt in this un-determined area of law is as follows:

**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.*

**APPLICATION:** The Estate of Shennen Blackburn should reimburse Shawn Blackburn for two years of overpaid daycare, \$15,600 (\$650 x 24) which shall be reduced under RCW 26.19.080(3) to \$12,000 (\$1000 x 12), and then that amount should be reduced if applicable by other equitable defenses to reimbursement.

Shawn Blackburn sought to have the more than \$50,000 in community home net value -- that is due under the decree to Shennen Goodyear-Blackburn (now due to her Estate, held for their son) -- reduced by the \$43,300 found by the trial court on 3/6/19 that Shennen owed to Shawn as reimbursement under RCW 26.19.130(3) for a ten-year period.

Instead, that reduction in reimbursement to Shennen's Estate should only be, at most, \$12,000.

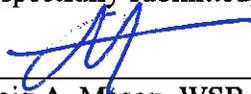
Properly applying case law, equitable principles, the statutes, and properly serving the legislative purpose of the statutes, the one-half share of the community home owing from Shawn to Shennen should be reduced

by, at most, \$12,000 to reimburse Shawn for overpaid expenses, and then further reduced as equitable relief.

The court is asked to clarify the law, and the court is asked to apply the law and equity as indicated, above.

Respectfully submitted,

6/30/19



---

Craig A. Mason, WSBA#32962  
Attorney for Appellant, Shennen Goodyear-Blackburn  
W. 1707 Broadway, Spokane, WA 99201  
509-443-3681/ masonlawcraig@gmail.com

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 July 1, 2019, I provided, via electronic  
filing, a copy of Appellant's Opening Brief to the following:

[amyrimov@gmail.com](mailto:amyrimov@gmail.com)

**Amy Rimov JD PS  
505 W Riverside Ave Ste 500  
Spokane, WA 99201-0518**

  
LORI MASON

MASON LAW  
Craig Mason  
1707 W. Broadway  
Spokane, WA 99201  
(509) 443-3681

**MASON LAW**

**July 01, 2019 - 1:18 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 36670-7  
**Appellate Court Case Title:** In re the Marriage of: Shennen Goodyear-Blackburn and Shawn Blackburn  
**Superior Court Case Number:** 09-3-03484-7

**The following documents have been uploaded:**

- 366707\_Briefs\_20190701131739D3440452\_5952.pdf  
This File Contains:  
Briefs - Appellants  
*The Original File Name was Opening Brief of Appellant.pdf*

**A copy of the uploaded files will be sent to:**

- amyrimov@gmail.com

**Comments:**

---

Sender Name: Lori Mason - Email: masonlawlori@gmail.com

**Filing on Behalf of:** Craig A Mason - Email: masonlawcraig@gmail.com (Alternate Email: masonlawlori@gmail.com)

Address:  
W. 1707 Broadway Ave.  
SPOKANE, WA, 99201  
Phone: (509) 443-3681

**Note: The Filing Id is 20190701131739D3440452**