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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Cause No. **37263-4-111**

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

VERITY BATISTA

v.

ALEX SAHA

BRIEF OF APPELLANT, ALEX SAHA

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I. Introduction

This appeal arises from the dismissal of a child support modification petition, as frivolous, and an award of all of the mother's attorney fees. Reversal is sought.

II. Assignments of Error

1. It was an abuse of discretion for the judge to find that the father provided insufficient verification of income to justify a modification when the judge was unaware of and apparently had not reviewed the verified documents provided, *see* RP 10 lns 1-14; 33 lns 1-8, and the documents provided fulfilled statutory requirements. *See* RP 33 ln 9 – ln 25; CP 448, 732, 736.
2. It was an abuse of discretion for the judge to conclude that it was frivolous for Mr. Saha to move forward with both hearings on his petition to modify. *See* RP 33, lns 9-13; CP 448, 732, 736.
3. It was an abuse of discretion for the judge to not revise and then order, attorney fees for a frivolous petition when there was no basis in fact or law to so conclude. *See* RP 10 lns 1-14, 33 lns 19-25, 448, 732, 736.
4. It was error for the judge to affirm the commissioner's orders. *See* RP 32 ln 24 – 33 ln 25.
5. It was error for the judicial officers to not find that the petition had been filed more than two years after the previous child support

order, with changed incomes. *Compare* CP 6 and CP 41, 46, 444-449, 722-723, 732.

6. It was an abuse of discretion to not allow modification to move forward based on the acknowledged change in the mother's income and the passing of two year's time since the last order. *See* CP 448, para13.
7. It was an abuse of discretion for the judge (and commissioner) to equate the complete lack of tangible, readable, financial data provided at trial in 2016, to the statutorily required and provided data at the modification hearing of tax returns and both personal and business bank statements as verifications of income. *See e.g.* CP 444 – 449, 722, 732.
8. It is an abuse of discretion, without substantial evidence and outside the range of evidence, to not find that Mr. Saha's income had changed from the previous order of \$10,000 net per month when all of the verified income data and life style showed income of less than 50% that amount. *See* CP 444 – 449.
9. It was error to dismiss the petition to effect the previous imputation of Mr. Saha's income, but not based on the current evidence and statutory hierarchy of imputation. *See* CP 27-28, 444-449; RCW 26.19.071(6).

10. It is an abuse of discretion for the judicial officers to determine that relatively small variations in income evidence between tax returns, bank accounts, and financial declarations, equates with a complete failure to verify income, or provide the proper “level of proof,” to show a substantial change of income - a reduction from a finding of \$10,000/net per month. *See* CP 444-449, and 732.
11. It was error to find that the level of proof required was missing, and that it was willfully missing. *See* RP 33 ln 19-25.
12. It is error for the court to enter any findings supporting dismissal and attorney fees, in addition to all other reasons, when the court did not make findings on all causes for modification.

III. Issues Pertaining to Assignments of Error

A. Did the court abuse its discretion by dismissing the petition?

Short Answer: Yes.

1. Child support modifications should be focused on present income, not the past findings; yet this dismissal effected adoption of the past findings.
2. Mr. Saha’s petition for modification should not have been dismissed: substantial evidence does not exist to support a finding of lack of verified income data.

3. Even if a court could find insufficient verification,
then the court was required to impute father's income.

B. Did the court abuse its discretion when finding the petition and
hearings were frivolous and awarding attorney fees?

Short Answer: Yes.

1. No basis in fact or law exists to award attorney fees.
2. The court debated whether to adjust the child support
order but declined to on equitable grounds, rather than
based on the law or facts.
3. The court declined to make other findings, not
addressing petitioned issues, not weighing the basis in
law and fact.
 - a. Substantial change of circumstances was not
addressed, debated or found.
 - b. The courts avoided findings concerning
adjustment of child support cause.
 - c. The courts did not make findings for relief under
Mr. Saha's severe economic hardship request.
4. The statutory process for attorney fees was not
followed.

5. The sanction of attorney fees was arguably impermissible punishment and impermissible disparate treatment of Mr. Saha.

IV. Statement of the Case

A child support order was entered January 15, 2016 whereby Mr. Saha's income was imputed at the level of \$10,000 per month, net. CP 1 and 7. The trial judge found this amount of income due to testimony about a marital lifestyle and the complete lack of current income documentation. CP 28. This order required Mr. Saha to pay \$1,167.00 per month in child support. CP 9.

Mr. Saha lived overseas at the time of the order. See CP 7. Therefore, the mother was to receive all tax exemptions for the child every year under 3.17. CP 11. Since the entry of the child support order, Mr. Saha had moved from Dubai to California. See CP 7 and 45.

On November 27, 2018, Mr. Saha filed a standard form Petition to Modify Child Support checking boxes that applied to his situation. CP 41 – 49. He based his petition on changes in several categories including 1) as an adjustment, that two years had passed and the parties' income had changed. CP 44. 2) A substantial change of circumstances in that he was no longer working and receiving income overseas which changed his

income tax responsibilities and had changed his income. CP 44 - 45. 3) That the present order of child support is creating a severe hardship on him. CP 44. 4) A request to change the medical insurance responsibilities based on changes of income and impracticalities in providing CA insurance for a child living in Washington State. CP 45.

Mr. Saha had already provided two years of personal tax returns, in the court file at the time of filing his petition. CP 56-72 and 120.

A preliminary motion to dismiss was brought by Ms. Batista under CR 12. CP 78 - 111. Therein, the mother provided evidence of the general hardship the child support order was for Mr. Saha, with historical child support payments made of \$34,208 but with amounts owed of \$23,740. CP 83.

Ms. Batista's motion to dismiss was dismissed. CP 119-122. The court found that if the facts alleged in the petition were true, and if Mr. Saha "provides all required information" then there would be basis upon which relief could be granted. CP at 4, para. 12. The court also found that financial declarations were required, but had not been provided by either party. CP 121 at (9). The court found that neither party had yet provided sufficient information to verify income. CP 121 at para 8. She cites the necessary information required of two years of tax returns, current paystubs, and "[o]ther sufficient verification shall be required for income and deductions which do not appear on tax returns or paystubs." CP 121,

In 8. She does not specify what “other” verification she would require of the father to be sufficient for “income and deductions which do not appear on tax returns.” *Id.* At that time, the mother had provided NO income verification or any declaratory evidence, of her finances, at all.

Before the final hearing, Mr. Saha provided a financial declaration CP 141-148; 2018 personal and business tax returns, his personal bank records spanning December 2017 – August 2019, and corporate bank records spanning December 2017 – August 2019. CP 149 – 335. He provided an updated child support worksheet. CP 336-341. He also provided a written declaration to generally explain his moving to the U.S., his wife as a student receiving student loans, and regarding his business - what it does, how it runs, and his finances CP 123 – 140. He filed a reply declaration providing information in answer to Ms. Batitsta’s accusations. CP 396-443.

Mr. Saha explained the income that he proposed in his updated child support worksheet was an average of all income from his business that he had deposited into his personal account in 2019, without deducting any business travel expenses that he paid from his personal account. CP 126 and CP 396. Mr. Saha had used 2019 bank deposits for the basis of his updated proposed child support worksheet income. *Id. and see* 336-341.

Despite 100's of pages of financial data that illustrated Mr. Saha's income has not come close to \$10,000 *net* in any month in the past two years; that Mr. Saha no longer lives in Dubai (*See e.g.* CP 7 for former service address) that both parent's agree that the mother's income has increased by over \$1,000/month (CP 8 of \$2,788 compared to CP 338 of \$3966), and that the child obviously does not need CA based health insurance, still, the court found that "the information present does not justify the modification as requested, and so I am denying the request to revise Commissioner High-Edward in her order entered on October 14, 2019, as requested by Ms. Rimov's motion filed October 23rd of 2019." RP 33 Ins. 4-8.

V. Argument

A. Relevant standards of review

Abuse of discretion standard is used for Child Support modification appeals, reversing or remanding if a decision rests on unreasonable or untenable grounds. *Goodell v. Goodell*, 130 Wn.App. 381, 388, 122 P.3d 929 (2005). "A trial court abuses its discretion when its decision is manifestly unreasonable or is based on untenable grounds or untenable reasons." *Will v. Frontier Contractors Inc.*, 121 Wn.App. 119, 128, 89 P.3d 342 (Div. 2, 2004)(*citing Hizey v. Carpenter*, 119 Wn.2d 251, 268, 830 P.2d 646 (1992)).

An appellate court will accept the findings on appeal if they are supported by substantial evidence. *See N. Fiorito Co., v. State*, 69 Wn.2d 616, 619, 419 P.2d 586 (1966).

To the extent that a trial court misapplies the law, such as a wrong legal standard or relies on unsupported facts, that decision is based on untenable grounds or reasons. *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006). And even if applying the correct law and supported facts, if the court adopts a view that no reasonable person would take, that is a manifestly unreasonable decision. *Id.*

Whether the findings of fact support the conclusions of law and the judgment is reviewed do novo. *In re Dependency of Schermer*, 161 Wn 2d 927, 939-40, 169 P.3d 452 (2007).

The fact finder should not make unsupported findings outside the scope of the evidence as discussed in *In re Marriage of Soriano*, 31 Wn.App. 432, 643 P.2d 450 (Div. 1, 1982)(citing *Palmer v. Abrahams*, 55 Wn.352, 104 P.648 (1909); and see *Tormo v. Hayek*, 133 Wn.App. 244, 252, 135 P.3d 536 (Div. 3, 2006). Essentially guessing at an income amount is using discretion in an untenable and manifestly unreasonable way. *State ex rel. Stout v. Stout*, 89 Wn.App. 118, 124, 948 P.2d 851 (1997).

A trial court must provide written findings of fact in a child support modification action which must be supported by substantial

evidence to justify the court's conclusions. *Id.* "Substantial evidence is that which would persuade a fair-minded and rational person of the truth of a stated premise." *Id.*

Review of dismissed actions under CR 41 (b) is an abuse of discretion standard. *Rivers v. Washington State Conference of Mason Contractors*, 145 Wn.2d 674, 684-85, 41 P.3d 1175 (2002). However, "Washington courts do not resort to dismissal lightly." *Id.* at 686. Where a court has been a fact-finder in the dismissal, appellate review is whether substantial evidence supports the trial court's findings, but de novo review on the question of whether the findings support its conclusions of law. *Schermer*, 161 Wn.2d at 939-40.

Attorney fees awarded for frivolous petitions under RCW 4.84.185 are reviewed for abuse of discretion. *Kilduff v. San Juan County*, 194 Wn.2d 859, 453 P.3d 719 (2019). A frivolous action is one that cannot be supported by *any* rational argument on the law or facts. *Eller v. East Sprague Motors & R.V. 's, Ind.*, 159 Wn.App. 180, 191-192 (Div. 3, 2010). A petition is not frivolous unless all aspects of it are frivolous. *Kilduff*, 194 Wn.2d at 874.

B. The court abused its discretion by dismissing the Petition for Modification.

1. Child support modifications should be focused on present income, not the past findings; yet this dismissal effected adoption of the speculative past findings.

The court cannot rely on any pre-divorce conduct to determine a modification action. *Corson v. Corson*, 46 Wn.2d 611, 283 P.2d 673 (1955). “A court must determine support according to the current circumstances of the parties.” *In re Marriage of Scanlon and Witrak*, 109 Wn.App. 167, 178, 34 P.3d 877 (2001). Past earnings are not of primary relevance when a parent’s income has changed. *In re Marriage of Payne*, 82 Wn.App. 147, 152, 916 P.2d 968 (1996).

Yet, in this case, the oral ruling shows the current judge’s focus on the past as he commented on the pre-divorce Rolex lifestyle that the trial judge had observed, to justify ignoring all the current evidence disbelieving that Mr. Saha could currently only have an average American life style. RP 19 lns 14-22 compared to RP 15, ln 26 – RP 16 ln 15, and see CP 27-28.

Within the modification data provided, there was no evidence in 100’s of pages of bank statements, of purchases for luxurious gifts, nor his own funds spent on overseas travel. See CP 166-335. Mr. Saha explained that if he travels overseas it is for business, and others sponsor him and pay his way. CP 399 ln 20 – 23.

Under the standards for child support modifications, it is an abuse of discretion based on untenable reasons, for the court to dismiss, in order to utilize the prior court's figures based on the parties' long ago lifestyle, *See e.g.* CP27 – CP 28, rather than using current financial data or current imputation.

2. Mr. Saha's petition for modification should not have been dismissed; substantial evidence does not exist to support a finding of lack of verified income data.

The commissioner found that “Mr. Saha's petition suffers the same issues that faced Judge Moreno in 2016.” CP 447, para 12. The judge affirmed the Commissioner's order. CP 32 ln 24 – 33 lns. 13. The claimed issue of both judicial officers was finding a lack of verification data for Mr. Saha's income. CP 33, 448 para 12.

“Once the superior court makes a decision on review, the appeal is from the superior court's decision, not the commissioner's.” *Fairchild v. Davis*, 148 Wn.App. 828, 831, 207 P.3d 449 (Div. 3, 2009)(citing *State v. Ramer*, 151 Wn.2d 106, 113, 86 P.3d 132 (2004)). This superseding rule may be limited to where a superior court makes independent findings and conclusions. *See in re Guardianship of Knutson*, 160 Wn.App. 854, 863, 250 P.3d 1072 (Div. 1, 2011). Because the superior court seemed to adopt the commissioner's ruling, CP 33 lns 5-6, this appeal will be addressing both the judge's and commissioner's orders.

Both of Mr. Saha's proposed child support worksheets were supported by verification information. The first filed worksheet was consistent with his 2017 tax return. *Compare CP 50-55, CP 56-72.* Mr. Saha's WSCSSW filed near the time of hearing was based on his 2019 personal bank deposits. *See CP 336-341, 396 & 404.*

To justify not making an income finding for Mr. Saha, the fact finders equated over 270 pages worth of Mr. Saha's filed financial and verification data on modification, with Judge Moreno's findings of complete lack of verification. The original divorce judge had found that Mr. Saha had not turned over any financial data at all, not even tax returns. CP 26 ln 25 – 27 ln 3; CP 28 ln 8-9. The Commissioner acknowledged that Mr. Saha had filed 2016-2018 tax returns and more than 12 months of bank statements from his business and personal accounts, as well as a financial declaration. CP 445-446.

Instead of focusing on Mr. Saha's income, the commissioner focused on expenses and found that all of Mr. Saha's personal expenses were not verified in his bank statements, such as no grocery store expenses. CP 448 para 12. The statute requires verification of income, not verification of all personal expenses. *See RCW 26.19.075 (2).* The record shows that Mr. Saha's wife has a separate account into which she puts her own student loan money, and she could have been paying the missing utilities and groceries even while Mr. Saha sometimes paid her pet

expenses that were not on his financial declaration. In any event, student loans are not income. CP 397, ln 13-18. *See* RCW 26.19.071 (3) (loans not included in income).

· Instead of focusing on Mr. Saha's income, the court also focused on expenses in his business bank statements that the commissioner suspected were personal, such as to Old Navy, Nordstrom's and a grocery store. CP 448 para 12. This focus had a remedy under RCW 26.19.075 (5)(h). That statute addresses concern over impermissible business deductions stating, "Justification shall be required for any business expense deduction about which there is disagreement." RCW 26.19.075 (5)(h). The remedy, logically, is to not allow the expense deduction, not dismiss.

The commissioner found no profit and loss statements. The statute that requires verification of income does not require profit and loss statements to verify income. *See* RCW 26.19.071 (2). Additionally, Mr. Saha says he doesn't have any profit and loss statements, noting that his tax returns are the best evidence of such. CP 398 ln 8-16.

No reasonable person would equate NO financial data with the over 270 pages of financial data Mr. Saha filed. The commissioner impermissibly equated inconsistencies with NO verification. *See* CP 446-448. Inconsistencies has a statutory remedy, which is not dismissal. When income of the parties is not ascertainable or the court finds that a

party lacks credibility and wants to avoid making findings on the data presented, then that parties' income is to be imputed. See RCW 26.19.071 (6); *In re Marriage of Dodd*, 120 Wn.App. 638, 86 P.3d 801 (2004).

3. When the court refused to make income findings based on the evidence, then the court was required to impute the father's income.

The child support modification process is not well suited for ferreting out nuances, especially involving business income and expenses. Child support modification actions are routinely done on written declarations and documents, without testimony to inquire into the financial nuances. See Spok. LR 94.04 (n) (2)(D) and (4). As occurred here, sometimes questions about finances, especially business finances, cannot be clearly resolved in this limited court process. Additionally, sometimes, such as here, a fact finder just does not believe an obligor's evidence, no matter how much is filed. See CP 448 para 12; RP 33. When this is the case, the court is directed to impute income. "In the absence of records of a parent's actual earnings, the court *shall* impute a parent's income. . . ." RCW 26.19.071 (6) (*emphasis added*).

The Division III *Dodd* court illustrated the use of the imputation statute when concealment of income was an issue, requiring the income to be imputed to the median U.S. census level. *In re Marriage of Dodd*, 120

Wn.App. 638, 646, 86 P.3d 801 (2004).

The Division II *Didier* court also illustrated the use of this statute when a father refused to provide any income information and also imputed this father at the median U.S. census level. *In re Marriage of Didier*, 134 Wn.App. 490, 497-98, 140 P.3d 607 (2006).

Both of these cases addressed the need for finding voluntary unemployment or underemployment before imputing income when the level of income was not ascertainable. *Id.* But the 2009 amendment to RCW 26.19.071 (6) removed that requirement. *See* Appx. at 14. After the 2009 amendment, *any* parent whose current income is not verified shall have their income imputed. In other words, imputing parental income for lack of verification no longer applies only to voluntarily underemployed or unemployed persons, *See* RCW 26.19.071 (6) and Appx. at 14 compared with the previous version of RCW 26.19.071(6), Appx. at 20. Now, imputation applies to all parents: “In the absence of records of a parent’s actual earnings, the court shall impute a parent’s income. . .” *Id.*

In the case at bar, the superior court seemed to rely on the 1993 case of *In re Marriage of Bucklin* to justify its dismissal. *See* RP 21-23 and 32-33. But *Bucklin* relied on the 1991 version of RCW 26.19.071(6), which had no remedy for Mr. Bucklin. *Bucklin* has been superseded by the 2009 statute amendment and cannot be used as precedent to dismiss for lack of verification. The

statue now requires imputation for lack of verification, and dismissal is not an option.

Of note, the *In re Marriage of Bucklin*, 70 Wn.App. 837, 855 P.2d 1197 (1993) the court only addresses a lack of substantial change under RCW 26.19.071(1), with no discussion of underemployment or unemployment, as would have been required in 1993 for imputation. In 1993, the Bucklin court had no choice but to dismiss for lack of verification and lack of employment status.

The current RCW 26.19.071, last sentence of (6) now reads: “In the absence of records of a parent’s actual earnings, the court shall impute a parent’s income in the following order of priority:

- (a) Full-time earnings at the current rate of pay;
- (b) Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data;
- (c) Full-time earnings at a past rate of pay where information is incomplete or sporadic;
- (d) Full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent.
- (e) Median net monthly income of year-round full-time workers as derived from the United States bureau of census, current population reports, or such replacement report as published by the bureau of census.”

Here, since no past earning data for Mr. Saha is reliable, the only imputation category that could be applied to Mr. Saha is (e), net income at

the U.S. median full time worker level. But, expectantly, that determination is for the trier of fact upon remand.

C. Mr. Saha's petition to modify child support was not frivolous, and therefore, attorney fees should not have been awarded.

1. No basis in fact or law exists to award attorney fees.

The court nor counsel cited to any specific law under which the attorney fees were awarded. But the orders imply a frivolous petition finding resulted in attorney fees. *See* CP 448, CP 722-723, and RP 33 Ins 11-13. Therefore, it appears that attorney fees are being ordered under the authority of RCW 4.84.185.

An action is deemed as frivolous only if it “cannot be supported by any rational argument on the law or facts.” *Eller v. East Sprague Motors & R.V.'s Inc.*, 159 Wn.App. 180, 191-192, 244 P.3d 447 (Div. 3, 2010)(quoting *Clarke v. Equinox Holdings, Ltd.*, 56 Wn.App. 125, 132, 783 P.2d 82, review denied, 113 Wn.2d 1001, 777 P.2d 1050 (1989)) In order words, “[t]he action cannot be supported by any rational argument and is advanced without reasonable cause.”

Here, none of the reasons for which Mr. Saha requested a child support modification were devoid of debatable issues of fact or law. But,

the court did not make findings to show any consideration for most of Mr. Saha's requests.

As addressed previously, the court should have admitted that Mr. Saha's income was findable from the verifiable documents. If it was not, then the court should have imputed income to Mr. Saha based on the median U.S. income. *See supra* 17-20. Mr. Saha's contentions were well grounded and supported in fact and law.

On August 7, 2019, the commissioner found that if the facts in Mr. Saha's petition are true, there is basis upon which relief could be granted, so long as the required information is also provided. CP 122 para 12. That finding was not revised. That finding in the record already properly concludes that there is a proper basis in law for Mr. Saha's petition.

Before the final child support hearing of September 27, 2019, Mr. Saha had filed much documentation to support his petition and verify his income. The additional documents are within the record from CP 123 – 341, which is 218 pages of documentation and verifications, and additional reply documents from CP 396 – 441, which is another 45 pages of evidence. This is in addition to the sealed financial source documents filed with his petition of CP 56-72 (16 pages). All told, the commissioner and judge had over 279 pages of documentation, explanations, and verifications filed by Mr. Saha in support of his petition to modify child support.

Mr. Saha and his attorney had plenty of valid arguments, on the evidence filed, which verified Mr. Saha's child support worksheets which supported Mr. Saha's petition to modify child support, in order to move to revise the commissioner's order. *See* RP 8 ln 16 – pg 9 ln 22, 11, ln 12 - 18 ln 25; *see also* CP 56-72 and 123-441.

RCW 4.84.185 *required* the judge to consider all the evidence presented at the time of the motion before deciding that there was no valid argument in law or fact to support Mr. Saha's petition. But at the time of the revision hearing, the judge had an erroneous understanding of what verification documentations Mr. Saha had provided, suggesting that Mr. Saha had only provided two documents – a 2018 tax return and 2019 business records. RP 10 ln 1 -14. The judge's comments illustrate that he had not independently considered all of the evidence presented at the time of the revision motion. The judges lacked knowledge of the content of the 279 pages of evidence from Mr. Saha, before pronouncing that 1) Mr. Saha's petition was frivolous; 2) that Mr. Saha's information was fatally deficient; and 3) his petition was inappropriately filed and advanced on revision. *See* RP 33 ln 9 – 25.

These findings and conclusion against Mr. Saha are untenable, if not debatably untenable. In contrast, Mr. Saha clearly passed his non-frivolous, rational argument bar, to avoid attorney fees.

2. The court debated whether to adjust the child support order but declined to on equitable grounds, rather than based on the law or facts.

Mr. Saha alleged under RCW 26.09.170 (7) (a) that since 24 months had passed since the date of the last child support order and changes in the incomes of the parties had occurred, therefore adjustments in the child support order were allowed. CP 44. Under this statutory provision, no requirement for a finding of a substantial change of circumstances is required. *See* RCW 26.09.170 (7)(a). The judge and commissioner acknowledge this statutory basis. RP 32 ln 10 -19; *See* CP 446.

Both parties acknowledged and asserted that the mother's income had increased by close to 1/3 from \$2785 net in 2016 CP 1, to \$3,966 net in 2019. *See* CP 368. This change alone would change Mr. Saha's duty in the percentage of health care and health insurance expenses from 78.2% per CP 12 to 71.8% per CP 368. It also reduced Mr. Saha's basic support obligation by \$40/month, to be adjusted to \$1126.27, CP 369, compared to \$1,166.74. CP 2.

Yet, the commissioner claimed a modification based on Ms. Battista's changed income alone would have been inequitable, CP 448 para 13, and the judge affirmed. CP 732. Logically, a decision based in equity rather than law is a debatable issue.

Furthermore, there is no basis in case law or otherwise to dismiss an action based on finding one party's income had changed and the other party's income was undeterminable. Therefore, at the least, this is a debatable issue of first impression, and cannot be dismissed as frivolous with an assessment of attorney fees. *See Moorman v. Walker*, 54 Wn.App. 461, 466, 773 P.2d 887 (1989).

3. The court declined to make other findings, not addressing petitioned issues in order to weigh their basis in law and fact.

a. Substantial change of circumstances was not addressed, debated or found.

Mr. Saha had asked the court to find that a substantial change of circumstances occurred, because he had moved to CA from Dubai at the time of trial. *See* CP 41-49; RCW 26.09.170 (5)(a).

(5)(a) A party to an order of child support may petition for a modification based upon a showing of substantially changed circumstances at any time.
(b) An obligor's voluntary unemployment or voluntary underemployment, by itself, is not a substantial change of circumstances.

Where a statute requires finding a substantial change in circumstances, such is a material factual determination and the trial court should make that finding of fact. *In re Marriage of Cook*, 28 Wn.App. 518, 521, 624 P.2d 743 (Div. 1, 1981).

The court of *In re Marriage of Scanlon and Witrak*, 109 Wn.App. 167, 174, 34 P.3d 877 (2001) reversed and remanded when the findings of the commissioner, adopted by the revision court, did not address the issue of changed circumstances supporting a modification, and also noted that the record did not support the order of child support, either.

Similarly, in the case at bar, the court did not address whether a substantial change of circumstances had occurred, so there is no record on why the court might have thought Mr. Saha's substantial change basis was frivolous and sanction-able, requiring remand.

b. The rulings avoided all findings concerning a requested adjustment of child support.

Mr. Saha asked for an adjustment to occur because the parties' income had changed from what was found at trial, under RCW 26.09.170 (7)(a):

If twenty-four months have passed from the date of the entry of the order or the last adjustment or modification, whichever is later, the order may be adjusted without a showing of substantially changed circumstances based upon: . . .

(i) Changes in the income of the parents. . . .”

RCW 26.09.170(7)(a) *and See* CP 41-49.

The court declined to make any finding at all on Mr. Saha's present income or change in income. *See supra*. 13-20. The issues were more than debatable, and should have precluded a frivolous petition finding.

c. No findings for relief under Mr. Saha's severe economic hardship request were entered.

Mr. Saha had also asked for a modification under RCW 26.09.170

(6)(a):

“(6) An order of child support may be modified one year or more after it has been entered without a showing of substantially changed circumstances:

(a) If the order in practice works a severe economic hardship on either party or the child;. . .” *Id. and* CP 41-49.

RCW 26.09.170 (6)(a) allows a petition for modification of child support order one year or more after it was entered if the order in practice works a severe **economic hardship** on either party or the child.

The court avoided any findings on the hardship the current order was effecting on Mr. Saha.

The evidence provided even by the mother described the economic hardship the order worked. In her motion to dismiss, the mother provided the child support payment history that the father had paid of \$34,208 but was in arrears \$23,740. CP 83. She explained that she has received a judgment against Mr. Saha for \$10,332 in atty fees and \$23,563 in past support, with \$7000 of that was paid with the sale of his personal property. CP 243 ln 16-18. She provided an internet printout of CA corporate business entity data on Mr. Saha's business showing his

business license was registered March of 2017 but suspended as of Sept. 2019. CP 357.

Mr. Saha noted that he owed CA State \$738 in taxes that were eventually garnished from him, as the reason for his license suspension. CP 397. He pays very limited funds to his other child he claims, who lives in Russia. CP 399 *and see* CP 129, 136, 140.

The verified financial information Mr. Saha provided, including his tax returns and bank statements do not support a findings of a \$10,000/month net life style at all. His 2018 tax returns shows about \$30,000/yr in net income. CP 150. He provided his 2018 corporate tax return showing the normal business expenses that he claimed at CP 164. His financial declaration shows monthly personal expenses at \$3226, not including his child support expenses, his business expenses, nor his wife's pet expenses. CP 144-145. His updated WSCSSW generously gave himself \$4420 in gross income, as the verified amount of income he had received into his personal bank account from his corporation in 2019. CP 336, 125, 126, 397, 404, and CP 166- 261.

As he acknowledged, there is monthly variance on his income because he receives commissions, only, at 30% and what the corporation has provided to him over 21 months is set forth, with particulars, at CP 404.

Mr. Saha does not have good English nor good spelling skills as exhibited by the Interrogatory Answers that he wrote attached as *Exhibit D* to his Reply declaration. *See e.g.* CP 396-397, 400, 431, 435, 439. This too is circumstantial evidence of his inability to net \$10,000/month income while residing in the U.S. and evidence of why the current large amount of child support order is working a severe hardship.

The court seemed to acknowledge that Mr. Saha was in substantial arrears at the time of the hearing. *See* VRP 28 lns 11-22. The commissioner made findings of bank deposits that were within the range of evidence of what Mr. Saha had also attested to - of between \$2,666 and \$4,918. *See* CP 447 para 9 - 448. The judge accepted that Mr. Saha was far behind in child support, but affirmed the commissioner's attorney fees and added more for \$11,118.50 in additional attorney fees debt to run at 12% interest for Mr. Saha's efforts in seeking a reduction in child support. CP 723 and 732.

The record is devoid of evidence that Mr. Saha can or is earning sufficient income that he can consistently pay his current child support and arrears, attorney fees, his own rent and monthly expenses without substantial hardship.

Facts and rational argument were presented to support a severe economic hardship cause with the previous order, but it was resisted with sanctions and dismissal. *See* Orderd at CP 444-449, 722-723 & 732.

4. The statutory process was not followed.

RCW 4.84.185 requires a determination of the frivolity of an action for attorney fees in a separate motion by the prevailing party. Specifically, “upon motion by the prevailing party after a voluntary or involuntary order of dismissal. . . .” *Id.* Undoubtedly, the requirement of a motion to be filed helps guide the court on who has the burden of proof for a “frivolous” finding – which would then be the prevailing party.

Per RCW 4.84.185, the judge is required to consider all evidence presented at the time of the motion to determine whether the position of the non-prevailing party was frivolous and advanced without reasonable cause. *Id.*

Here, the prevailing party did not bring a motion for attorney fees under any authority *after* Mr. Saha’s motion was dismissed. Rather, the judicial officers ordered attorney fees to be paid, simultaneously and sua sponte, with the child support hearing in chief.

In the case at bar, the lack of following process lead to an order based on untenable grounds. When the defendant did not file a motion for attorney fees, the facts and law surrounding the issue were not developed, the burden of proof shifting to the prevailing party was not clear, and the additional evidence and argument filed in objection to the ordering of attorney fees as an attempt to illustrate the disparate standards being applied against Mr. Saha and lack of clean hands of Ms. Battista, at

CP 509-687 and 688 – 721, were excluded, *see* CP 723, para 3 and 4.

Both courts' sua sponte found and ordered attorney fees not based on the appropriate legal standard nor process. *See* RCW 4.84.185; CP 448, 722-723, 732.

5. The sanction of attorney fees was, arguably, impermissible punishment and impermissible disparate treatment of Mr. Saha.

Impermissible bias is an untenable basis to deny relief to Mr. Saha. Impermissible bias is legally perceptible through disparate treatment. *See Johnson v. Department of Social and Health Services*, 80 Wn.App. 212, 227, 907 P.2d 1223 (1996).

Counsel for Mr. Saha raised the issue of impermissible bias as a potential motive for the court's decision, because Mr. Saha was being treated unfairly differently than Ms. Battista. *See* RP 18. For example, Ms. Battista had provided "check stubs" with a great amount of data blacked out – even the business for which she worked was redacted. CP 381-395. No judicial officer commented about that. But when Mr. Saha blacked out his and his wife's SS numbers, the commissioner found that his information was "highly redacted." *See* CP 120, para 3. This suggests a much higher evidentiary standard is being used for Mr. Saha than Ms. Battista.

On revision, when counsel for Mr. Saha raised the possibility of inappropriate bias as the motivation for penalizing Mr. Saha for his child support request, this counsel was yelled at and shut down with nearly the force of contempt within the court room. RP 19. Quoting a Shakespeare observation in human psychology, “Me thinks [he] protests too much.” Citing law, retaliation that occurs when a person complains about discrimination constitutes willfull discrimination. *Jordan v. Birmingham Bd of Educ.* 544 US 167, 173-74, 125 S Ct 1497 (2005).

This counsel has been educated through WSBA’s CLE’s on implicit bias, and assumed that judicial officers have received similar training. Apparently not. Although this court is not being requested to find the superior court was biased, the issue was raised because bias, understandably, can create decisions not based on substantial evidence, such as occurred here.

The determination that Mr. Saha’s petition was frivolous in law or fact justifying the award of all attorney fees, is not supported by the evidence nor the law and was an abuse of discretion. The attorney fees and frivolous finding of dismissal also appear to be driven by an irrational desire to hold Mr. Saha to a higher standard than the other party, and includes not believing Mr. Saha on any point, and punishing Mr. Saha, all which appear to be expressions of impermissible bias. It is debatable, at least.

The award of attorney fees should be vacated.

VI. CONCLUSION

In summary, unless a person is persuaded with prejudice against Mr. Saha or if they ignored the legal standards, and the facts, reasonable people would have found income and deduction figures for Mr. Saha within the range of evidence, and if any doubts about Mr. Saha's income and deductions were too great, they would have imputed his income at the level of the median income for a year round worker in the U.S. Reasonable people would have noticed a substantial change occurred with Mr. Saha living in CA rather than Dubai and accepted the changes of income of both parties since the last order. A modified child support order would have been entered, and not dismissed. Notwithstanding all of those conclusions, reasonable people would have cause to debate any and all of the issues presented based on the facts and law, precluding an award of attorney fees. Reversal is requested.

Respectfully submitted this 17th day of April, 2020.



AMY RIMOV, WSBA 30613
Attorney for Appellant

VII APPENDIX

WASHINGTON 2009 LEGISLATIVE SERVICE
S.H.B. NO. 1794 -CHILD SUPPORT-CALCULATION.Appx. 1

WASHINGTON 1991 LEGISLATIVE SERVICE
S.S.B. NO. 5996 - CHILD SUPPORT Appx. 17

2009 Wash. Legis. Serv. Ch. 84 (S.H.B. 1794) (WEST)

WASHINGTON 2009 LEGISLATIVE SERVICE

60th Legislature, 2009 Regular Session

Additions are indicated by Text; deletions by

Text. Changes in tables are made but not highlighted.

Vetoed provisions within tabular material are not displayed.

CHAPTER 84

S.H.B. No. 1794

DOMESTIC RELATIONS—CHILD SUPPORT—CALCULATION

AN ACT Relating to calculating child support; amending RCW 26.19.020, 26.19.065, 26.19.071, 26.19.075, and 26.19.080; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 26.19.020 and 1998 c 163 s 2 are each amended to read as follows:

<< WA ST 26.19.020 >>

ECONOMIC TABLE

MONTHLY BASIC SUPPORT OBLIGATION

PER CHILD

KEY: A AGE 0-11 B AGE 12-18

**COMBINED
MONTHLY
NET
INCOME**

**ONE
CHILD
FAMILY**

**TWO
CHILDREN
FAMILY**

A

B

A

B

DOMESTIC RELATIONS—CHILD SUPPORT—CALCULATION, 2009 Wash. Legis....

For income less than \$1000 the obligation is based upon the resources and living expenses of each household. Minimum support may not be less than \$50 per child per month except when allowed by RCW 26.19.065(2).

| | | | | |
|------|-----|-----|-----|-----|
| 1000 | 220 | 272 | 171 | 211 |
| 1100 | 242 | 299 | 188 | 232 |
| 1200 | 264 | 326 | 205 | 253 |
| 1300 | 285 | 352 | 221 | 274 |
| 1400 | 307 | 379 | 238 | 294 |
| 1500 | 327 | 404 | 254 | 313 |
| 1600 | 347 | 428 | 269 | 333 |
| 1700 | 367 | 453 | 285 | 352 |
| 1800 | 387 | 478 | 300 | 371 |
| 1900 | 407 | 503 | 316 | 390 |
| 2000 | 427 | 527 | 331 | 409 |
| 2100 | 447 | 552 | 347 | 429 |
| 2200 | 467 | 577 | 362 | 448 |
| 2300 | 487 | 601 | 378 | 467 |
| 2400 | 506 | 626 | 393 | 486 |
| 2500 | 526 | 650 | 408 | 505 |
| 2600 | 534 | 661 | 416 | 513 |
| 2700 | 542 | 670 | 421 | 520 |
| 2800 | 549 | 679 | 427 | 527 |

DOMESTIC RELATIONS—CHILD SUPPORT—CALCULATION, 2009 Wash. Legis....

| | | | | |
|------|-----|-----|-----|-----|
| 2900 | 556 | 686 | 431 | 533 |
| 3000 | 561 | 693 | 436 | 538 |
| 3100 | 566 | 699 | 439 | 543 |
| 3200 | 569 | 704 | 442 | 546 |
| 3300 | 573 | 708 | 445 | 549 |
| 3400 | 574 | 710 | 446 | 551 |
| 3500 | 575 | 711 | 447 | 552 |
| 3600 | 577 | 712 | 448 | 553 |
| 3700 | 578 | 713 | 449 | 554 |
| 3800 | 581 | 719 | 452 | 558 |
| 3900 | 596 | 736 | 463 | 572 |
| 4000 | 609 | 753 | 473 | 584 |
| 4100 | 623 | 770 | 484 | 598 |
| 4200 | 638 | 788 | 495 | 611 |
| 4300 | 651 | 805 | 506 | 625 |
| 4400 | 664 | 821 | 516 | 637 |
| 4500 | 677 | 836 | 525 | 649 |
| 4600 | 689 | 851 | 535 | 661 |
| 4700 | 701 | 866 | 545 | 673 |
| 4800 | 713 | 882 | 554 | 685 |
| 4900 | 726 | 897 | 564 | 697 |
| 5000 | 738 | 912 | 574 | 708 |
| 5100 | 751 | 928 | 584 | 720 |
| 5200 | 763 | 943 | 593 | 732 |

DOMESTIC RELATIONS—CHILD SUPPORT—CALCULATION, 2009 Wash. Legis....

| | | | | |
|------|------|------|-----|------|
| 5300 | 776 | 959 | 602 | 744 |
| 5400 | 788 | 974 | 612 | 756 |
| 5500 | 800 | 989 | 622 | 768 |
| 5600 | 812 | 1004 | 632 | 779 |
| 5700 | 825 | 1019 | 641 | 791 |
| 5800 | 837 | 1035 | 650 | 803 |
| 5900 | 850 | 1050 | 660 | 815 |
| 6000 | 862 | 1065 | 670 | 827 |
| 6100 | 875 | 1081 | 680 | 839 |
| 6200 | 887 | 1096 | 689 | 851 |
| 6300 | 899 | 1112 | 699 | 863 |
| 6400 | 911 | 1127 | 709 | 875 |
| 6500 | 924 | 1142 | 718 | 887 |
| 6600 | 936 | 1157 | 728 | 899 |
| 6700 | 949 | 1172 | 737 | 911 |
| 6800 | 961 | 1188 | 747 | 923 |
| 6900 | 974 | 1203 | 757 | 935 |
| 7000 | 986 | 1218 | 767 | 946 |
| 7100 | 998 | 1233 | 776 | 958 |
| 7200 | 1009 | 1248 | 785 | 971 |
| 7300 | 1021 | 1262 | 794 | 982 |
| 7400 | 1033 | 1276 | 803 | 993 |
| 7500 | 1044 | 1290 | 812 | 1004 |
| 7600 | 1055 | 1305 | 821 | 1015 |

DOMESTIC RELATIONS—CHILD SUPPORT—CALCULATION, 2009 Wash. Legis....

| | | | | |
|-------|------|------|------|------|
| 7700 | 1067 | 1319 | 830 | 1026 |
| 7800 | 1078 | 1333 | 839 | 1037 |
| 7900 | 1089 | 1346 | 848 | 1048 |
| 8000 | 1100 | 1360 | 857 | 1059 |
| 8100 | 1112 | 1374 | 865 | 1069 |
| 8200 | 1123 | 1387 | 874 | 1080 |
| 8300 | 1134 | 1401 | 882 | 1091 |
| 8400 | 1144 | 1414 | 891 | 1101 |
| 8500 | 1155 | 1428 | 899 | 1112 |
| 8600 | 1166 | 1441 | 908 | 1122 |
| 8700 | 1177 | 1454 | 916 | 1133 |
| 8800 | 1187 | 1467 | 925 | 1143 |
| 8900 | 1198 | 1481 | 933 | 1153 |
| 9000 | 1208 | 1493 | 941 | 1163 |
| 9100 | 1219 | 1506 | 949 | 1173 |
| 9200 | 1229 | 1519 | 957 | 1183 |
| 9300 | 1239 | 1532 | 966 | 1193 |
| 9400 | 1250 | 1545 | 974 | 1203 |
| 9500 | 1260 | 1557 | 982 | 1213 |
| 9600 | 1270 | 1570 | 989 | 1223 |
| 9700 | 1280 | 1582 | 997 | 1233 |
| 9800 | 1290 | 1594 | 1005 | 1242 |
| 9900 | 1300 | 1606 | 1013 | 1252 |
| 10000 | 1310 | 1619 | 1021 | 1262 |
| 10100 | 1319 | 1631 | 1028 | 1271 |

Appx

DOMESTIC RELATIONS—CHILD SUPPORT—CALCULATION, 2009 Wash. Legis....

| | | | | |
|-------|------|------|------|------|
| 10200 | 1329 | 1643 | 1036 | 1281 |
| 10300 | 1339 | 1655 | 1044 | 1290 |
| 10400 | 1348 | 1666 | 1051 | 1299 |
| 10500 | 1358 | 1678 | 1059 | 1308 |
| 10600 | 1367 | 1690 | 1066 | 1318 |
| 10700 | 1377 | 1701 | 1073 | 1327 |
| 10800 | 1386 | 1713 | 1081 | 1336 |
| 10900 | 1395 | 1724 | 1088 | 1345 |
| 11000 | 1404 | 1736 | 1095 | 1354 |
| 11100 | 1413 | 1747 | 1102 | 1363 |
| 11200 | 1422 | 1758 | 1110 | 1371 |
| 11300 | 1431 | 1769 | 1117 | 1380 |
| 11400 | 1440 | 1780 | 1124 | 1389 |
| 11500 | 1449 | 1791 | 1131 | 1398 |
| 11600 | 1458 | 1802 | 1138 | 1406 |
| 11700 | 1467 | 1813 | 1145 | 1415 |
| 11800 | 1475 | 1823 | 1151 | 1423 |
| 11900 | 1484 | 1834 | 1158 | 1431 |
| 12000 | 1492 | 1844 | 1165 | 1440 |

**COMBINED
MONTHLY
NET
INCOME**

**THREE
CHILDREN
FAMILY**

**FOUR
CHILDREN
FAMILY**

**FIVE
CHILDREN
FAMILY**

DOMESTIC RELATIONS—CHILD SUPPORT—CALCULATION, 2009 Wash. Legis....

| | A | B | A | B | A | B |
|------|-----|-----|-----|-----|-----|-----|
| 1000 | 143 | 177 | 121 | 149 | 105 | 130 |
| 1100 | 157 | 194 | 133 | 164 | 116 | 143 |
| 1200 | 171 | 211 | 144 | 179 | 126 | 156 |
| 1300 | 185 | 228 | 156 | 193 | 136 | 168 |
| 1400 | 199 | 246 | 168 | 208 | 147 | 181 |
| 1500 | 212 | 262 | 179 | 221 | 156 | 193 |
| 1600 | 225 | 278 | 190 | 235 | 166 | 205 |
| 1700 | 238 | 294 | 201 | 248 | 175 | 217 |
| 1800 | 251 | 310 | 212 | 262 | 185 | 228 |
| 1900 | 264 | 326 | 223 | 275 | 194 | 240 |
| 2000 | 277 | 342 | 234 | 289 | 204 | 252 |
| 2100 | 289 | 358 | 245 | 303 | 213 | 264 |
| 2200 | 302 | 374 | 256 | 316 | 223 | 276 |
| 2300 | 315 | 390 | 267 | 330 | 233 | 288 |
| 2400 | 328 | 406 | 278 | 343 | 242 | 299 |
| 2500 | 341 | 421 | 288 | 356 | 251 | 311 |
| 2600 | 346 | 428 | 293 | 362 | 256 | 316 |
| 2700 | 351 | 435 | 298 | 368 | 259 | 321 |

For income less than \$1000 the obligation is based upon the resources and living expenses of each household. Minimum support may not be less than \$50 per child per month except when allowed by RCW 26.19.065(2).

Appx

DOMESTIC RELATIONS—CHILD SUPPORT—CALCULATION, 2009 Wash. Legis....

| | | | | | | |
|-------|-----|-----|-----|-----|-----|-----|
| 2800 | 356 | 440 | 301 | 372 | 262 | 324 |
| 2900 | 360 | 445 | 305 | 376 | 266 | 328 |
| 3000 | 364 | 449 | 308 | 380 | 268 | 331 |
| 3100 | 367 | 453 | 310 | 383 | 270 | 334 |
| 3200 | 369 | 457 | 312 | 386 | 272 | 336 |
| 3300 | 371 | 459 | 314 | 388 | 273 | 339 |
| 3400 | 372 | 460 | 315 | 389 | 274 | 340 |
| 3500 | 373 | 461 | 316 | 390 | 275 | 341 |
| 3600 | 374 | 462 | 317 | 391 | 276 | 342 |
| 3700 | 375 | 463 | 318 | 392 | 277 | 343 |
| 3800 | 377 | 466 | 319 | 394 | 278 | 344 |
| 3900 | 386 | 477 | 326 | 404 | 284 | 352 |
| 4000 | 395 | 488 | 334 | 413 | 291 | 360 |
| 4100 | 404 | 500 | 341 | 422 | 298 | 368 |
| 4200 | 413 | 511 | 350 | 431 | 305 | 377 |
| 4300 | 422 | 522 | 357 | 441 | 311 | 385 |
| 4400 | 431 | 532 | 364 | 449 | 317 | 392 |
| 4500* | 438 | 542 | 371 | 458 | 323 | 400 |
| 4600 | 446 | 552 | 377 | 467 | 329 | 407 |
| 4700 | 455 | 562 | 384 | 475 | 335 | 414 |
| 4800 | 463 | 572 | 391 | 483 | 341 | 422 |
| 4900 | 470 | 581 | 398 | 491 | 347 | 429 |
| 5000 | 479 | 592 | 404 | 500 | 353 | 437 |
| 5100 | 487 | 602 | 411 | 509 | 359 | 443 |

DOMESTIC RELATIONS—CHILD SUPPORT—CALCULATION, 2009 Wash. Legis....

| | | | | | | |
|------|-----|-----|-----|-----|-----|-----|
| 5200 | 494 | 611 | 418 | 517 | 365 | 451 |
| 5300 | 503 | 621 | 425 | 525 | 371 | 458 |
| 5400 | 511 | 632 | 432 | 533 | 377 | 466 |
| 5500 | 518 | 641 | 439 | 542 | 383 | 473 |
| 5600 | 527 | 651 | 446 | 551 | 389 | 480 |
| 5700 | 535 | 661 | 452 | 559 | 395 | 488 |
| 5800 | 543 | 671 | 459 | 567 | 401 | 495 |
| 5900 | 551 | 681 | 466 | 575 | 407 | 502 |
| 6000 | 559 | 691 | 473 | 584 | 413 | 509 |
| 6100 | 567 | 701 | 479 | 593 | 418 | 517 |
| 6200 | 575 | 710 | 486 | 601 | 424 | 524 |
| 6300 | 583 | 721 | 493 | 609 | 430 | 532 |
| 6400 | 591 | 731 | 500 | 617 | 436 | 539 |
| 6500 | 599 | 740 | 506 | 626 | 442 | 546 |
| 6600 | 607 | 750 | 513 | 635 | 448 | 554 |
| 6700 | 615 | 761 | 520 | 643 | 454 | 561 |
| 6800 | 623 | 770 | 527 | 651 | 460 | 568 |
| 6900 | 631 | 780 | 533 | 659 | 466 | 575 |
| 7000 | 639 | 790 | 540 | 668 | 472 | 583 |
| 7100 | 647 | 800 | 547 | 677 | 478 | 591 |
| 7200 | 654 | 809 | 554 | 684 | 484 | 598 |
| 7300 | 662 | 818 | 560 | 693 | 490 | 605 |
| 7400 | 670 | 828 | 567 | 701 | 496 | 613 |
| 7500 | 677 | 837 | 574 | 709 | 502 | 620 |

DOMESTIC RELATIONS—CHILD SUPPORT—CALCULATION, 2009 Wash. Legis....

| | | | | | | |
|-------|-----|------|-----|-----|-----|-----|
| 7600 | 685 | 846 | 581 | 718 | 507 | 627 |
| 7700 | 692 | 855 | 587 | 726 | 513 | 634 |
| 7800 | 700 | 865 | 594 | 734 | 519 | 642 |
| 7900 | 707 | 874 | 601 | 742 | 525 | 649 |
| 8000 | 714 | 883 | 607 | 750 | 531 | 656 |
| 8100 | 722 | 892 | 614 | 759 | 536 | 663 |
| 8200 | 729 | 901 | 620 | 767 | 542 | 670 |
| 8300 | 736 | 910 | 627 | 775 | 548 | 677 |
| 8400 | 743 | 919 | 633 | 783 | 553 | 684 |
| 8500 | 750 | 928 | 640 | 791 | 559 | 691 |
| 8600 | 758 | 936 | 646 | 799 | 565 | 698 |
| 8700 | 765 | 945 | 653 | 807 | 570 | 705 |
| 8800 | 772 | 954 | 659 | 815 | 576 | 712 |
| 8900 | 779 | 962 | 665 | 822 | 582 | 719 |
| 9000 | 786 | 971 | 672 | 830 | 587 | 726 |
| 9100 | 792 | 980 | 678 | 838 | 593 | 732 |
| 9200 | 799 | 988 | 684 | 846 | 598 | 739 |
| 9300 | 806 | 996 | 691 | 854 | 604 | 746 |
| 9400 | 813 | 1005 | 697 | 861 | 609 | 753 |
| 9500 | 820 | 1013 | 703 | 869 | 614 | 759 |
| 9600 | 826 | 1021 | 709 | 877 | 620 | 766 |
| 9700 | 833 | 1030 | 716 | 884 | 625 | 773 |
| 9800 | 840 | 1038 | 722 | 892 | 631 | 779 |
| 9900 | 846 | 1046 | 728 | 900 | 636 | 786 |
| 10000 | 853 | 1054 | 734 | 907 | 641 | 793 |

APPX

DOMESTIC RELATIONS—CHILD SUPPORT—CALCULATION, 2009 Wash. Legis....

| | | | | | | |
|-------|-----|------|-----|------|-----|-----|
| 10100 | 859 | 1062 | 740 | 915 | 647 | 799 |
| 10200 | 866 | 1070 | 746 | 922 | 652 | 806 |
| 10300 | 872 | 1078 | 752 | 930 | 657 | 812 |
| 10400 | 879 | 1086 | 758 | 937 | 662 | 819 |
| 10500 | 885 | 1094 | 764 | 944 | 668 | 825 |
| 10600 | 891 | 1102 | 770 | 952 | 673 | 832 |
| 10700 | 898 | 1109 | 776 | 959 | 678 | 838 |
| 10800 | 904 | 1117 | 782 | 966 | 683 | 844 |
| 10900 | 910 | 1125 | 788 | 974 | 688 | 851 |
| 11000 | 916 | 1132 | 794 | 981 | 693 | 857 |
| 11100 | 922 | 1140 | 799 | 988 | 698 | 863 |
| 11200 | 928 | 1147 | 805 | 995 | 703 | 869 |
| 11300 | 934 | 1155 | 811 | 1002 | 708 | 876 |
| 11400 | 940 | 1162 | 817 | 1009 | 714 | 882 |
| 11500 | 946 | 1170 | 822 | 1017 | 719 | 888 |
| 11600 | 952 | 1177 | 828 | 1024 | 723 | 894 |
| 11700 | 958 | 1184 | 834 | 1031 | 728 | 900 |
| 11800 | 964 | 1191 | 839 | 1038 | 733 | 906 |
| 11900 | 970 | 1199 | 845 | 1045 | 738 | 912 |
| 12000 | 975 | 1206 | 851 | 1051 | 743 | 919 |

The economic table is presumptive for combined monthly net incomes up to and including five twelve thousand dollars. ~~When combined monthly net income exceeds five thousand dollars, support shall not be set at an amount lower than the presumptive amount of support set for combined monthly net incomes of five thousand dollars unless the court finds a reason to deviate below that amount. The economic table is advisory but not presumptive for combined monthly net incomes that exceed five thousand dollars. When combined monthly net income exceeds seven twelve thousand dollars, the court may set support at an advisory amount of support set for combined monthly net incomes between five thousand and seven thousand dollars or the court may exceed the advisory presumptive amount of support set for combined monthly net incomes of seven~~

twelve thousand dollars upon written findings of fact.

Sec. 2. RCW 26.19.065 and 1998 c 163 s 1 are each amended to read as follows:

<< WA ST 26.19.065 >>

(1) **Limit at forty-five percent of a parent's net income.** Neither parent's total child support obligation owed for all his or her biological or legal children may exceed forty-five percent of net income except for good cause shown. ~~Good cause includes but is not limited to possession of substantial wealth, children with day care expenses, special medical need, educational need, psychological need, and larger families.~~

(a) Each child is entitled to a pro rata share of the income available for support, but the court only applies the pro rata share to the children in the case before the court.

(b) Before determining whether to apply the forty-five percent limitation, the court must consider whether it would be unjust to apply the limitation after considering the best interests of the child and the circumstances of each parent. Such circumstances include, but are not limited to, leaving insufficient funds in the custodial parent's household to meet the basic needs of the child, comparative hardship to the affected households, assets or liabilities, and any involuntary limits on either parent's earning capacity including incarceration, disabilities, or incapacity.

(c) Good cause includes, but is not limited to, possession of substantial wealth, children with day care expenses, special medical need, educational need, psychological need, and larger families.

(2) **Income below six hundred dollars Presumptive minimum support obligation.** (a) When ~~combined~~ a parent's monthly net income is less than six hundred dollars below one hundred twenty-five percent of the federal poverty guideline, a support order of not less than ~~twenty-five~~ fifty dollars per child per month shall be entered for each parent unless the obligor parent establishes that it would be unjust or inappropriate to do so in that particular case. The decision whether there is a sufficient basis to deviate below the presumptive minimum payment must take into consideration the best interests of the child and the circumstances of each parent. Such circumstances can include leaving insufficient funds in the custodial parent's household to meet the basic needs of the child, comparative hardship to the affected households, assets or liabilities, and earning capacity. A parent's

(b) The basic support obligation of the parent making the transfer payment, excluding health care, day care, and special child-rearing expenses, shall not reduce his or her net income below ~~the need standard for one person established pursuant to RCW 74.04.770~~ the self-support reserve of one hundred twenty-five percent of the federal poverty level, except for the presumptive minimum payment of ~~twenty-five~~ fifty dollars per child per month or in cases where the court finds reasons for deviation when it would be unjust to apply the self-support reserve limitation after considering the best interests of the child and the circumstances of each parent. Such circumstances include, but are not limited to, leaving insufficient funds in the custodial parent's household to meet the basic needs of the child, comparative hardship to the affected households, assets or liabilities, and earning capacity. This section shall not be construed to require monthly substantiation of income.

(3) **Income above five thousand and seven twelve thousand dollars.** The economic table is presumptive for combined monthly net incomes up to and including five twelve thousand dollars. ~~When combined monthly net income exceeds five thousand dollars, support shall not be set at an amount lower than the presumptive amount of support set for combined monthly net incomes of five thousand dollars unless the court finds a reason to deviate below that amount. The economic table is advisory but not presumptive for combined monthly net incomes that exceed five thousand dollars. When combined monthly net income exceeds seven twelve thousand dollars, the court may set support at an advisory amount of support set for combined monthly net incomes between five thousand and seven thousand dollars or the court may exceed the advisory presumptive amount of support set for combined monthly net incomes of seven twelve thousand dollars upon written findings of fact.~~

Sec. 3. RCW 26.19.071 and 2008 c 6 s 1038 are each amended to read as follows:

<< WA ST 26.19.071 >>

(1) **Consideration of all income.** All income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent. Only the income of the parents of the children whose support is at issue shall be calculated for purposes of calculating the basic support obligation. Income and resources of any other person shall not be included in calculating the basic support obligation.

(2) **Verification of income.** Tax returns for the preceding two years and current paystubs shall be provided to verify income and deductions. Other sufficient verification shall be required for income and deductions which do not appear on tax returns or paystubs.

(3) **Income sources included in gross monthly income.** Except as specifically excluded in subsection (4) of this section,

monthly gross income shall include income from any source, including:

- (a) Salaries;
- (b) Wages;
- (c) Commissions;
- (d) Deferred compensation;
- (e) Overtime, except as excluded for income in subsection (4)(h) of this section;
- (f) Contract-related benefits;
- (g) Income from second jobs, except as excluded for income in subsection (4)(h) of this section;
- (h) Dividends;
- (i) Interest;
- (j) Trust income;
- (k) Severance pay;
- (l) Annuities;
- (m) Capital gains;
- (n) Pension retirement benefits;
- (o) Workers' compensation;
- (p) Unemployment benefits;
- (q) Maintenance actually received;
- (r) Bonuses;
- (s) Social security benefits; and
- (t) Disability insurance benefits; and
- (u) Income from self-employment, rent, royalties, contracts, proprietorship of a business, or joint ownership of a partnership or closely held corporation.

(4) Income sources excluded from gross monthly income. The following income and resources shall be disclosed but shall not be included in gross income:

- (a) Income of a new spouse or new domestic partner or income of other adults in the household;
- (b) Child support received from other relationships;
- (c) Gifts and prizes;
- (d) Temporary assistance for needy families;
- (e) Supplemental security income;
- (f) General assistance; and
- (g) Food stamps; and
- (h) Overtime or income from second jobs beyond forty hours per week averaged over a twelve-month period worked to provide for a current family's needs, to retire past relationship debts, or to retire child support debt, when the court finds the income will cease when the party has paid off his or her debts.

Receipt of income and resources from temporary assistance for needy families, supplemental security income, general assistance, and food stamps shall not be a reason to deviate from the standard calculation.

(5) Determination of net income. The following expenses shall be disclosed and deducted from gross monthly income to calculate net monthly income:

- (a) Federal and state income taxes;
- (b) Federal insurance contributions act deductions;
- (c) Mandatory pension plan payments;
- (d) Mandatory union or professional dues;
- (e) State industrial insurance premiums;
- (f) Court-ordered maintenance to the extent actually paid;
- (g) Up to two five thousand dollars per year in voluntary pension payments retirement contributions actually made if the contributions were made for the two tax years preceding the earlier of the (i) tax year in which the parties separated with intent to live separate and apart or (ii) tax year in which the parties filed for dissolution show a pattern of contributions during the one-year period preceding the action establishing the child support order unless there is a determination that the contributions were made for the purpose of reducing child support; and
- (h) Normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about which there is disagreement.

Items deducted from gross income under this subsection shall not be a reason to deviate from the standard calculation.

(6) Imputation of income. The court shall impute income to a parent when the parent is voluntarily unemployed or

voluntarily underemployed. The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed based upon that parent's work history, education, health, and age, or any other relevant factors. A court shall not impute income to a parent who is gainfully employed on a full-time basis, unless the court finds that the parent is voluntarily underemployed and finds that the parent is purposely underemployed to reduce the parent's child support obligation. Income shall not be imputed for an unemployable parent. Income shall not be imputed to a parent to the extent the parent is unemployed or significantly underemployed due to the parent's efforts to comply with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child. ~~In the absence of information to the contrary, a parent's imputed income shall be based on the median income of year-round full-time workers as derived from the United States bureau of census, current populations reports, or such replacement report as published by the bureau of census.~~ In the absence of records of a parent's actual earnings, the court shall impute a parent's income in the following order of priority:

- (a) Full-time earnings at the current rate of pay;
- (b) Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data;
- (c) Full-time earnings at a past rate of pay where information is incomplete or sporadic;
- (d) Full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, is recently coming off public assistance, general assistance-unemployable, supplemental security income, or disability, has recently been released from incarceration, or is a high school student;
- (e) Median net monthly income of year-round full-time workers as derived from the United States bureau of census, current population reports, or such replacement report as published by the bureau of census.

Sec. 4. RCW 26.19.075 and 2008 c 6 s 1039 are each amended to read as follows:

<< WA ST 26.19.075 >>

(1) Reasons for deviation from the standard calculation include but are not limited to the following:

(a) **Sources of income and tax planning.** The court may deviate from the standard calculation after consideration of the following:

- (i) Income of a new spouse or new domestic partner if the parent who is married to the new spouse or in a partnership with a new domestic partner is asking for a deviation based on any other reason. Income of a new spouse or new domestic partner is not, by itself, a sufficient reason for deviation;
- (ii) Income of other adults in the household if the parent who is living with the other adult is asking for a deviation based on any other reason. Income of the other adults in the household is not, by itself, a sufficient reason for deviation;
- (iii) Child support actually received from other relationships;
- (iv) Gifts;
- (v) Prizes;
- (vi) Possession of wealth, including but not limited to savings, investments, real estate holdings and business interests, vehicles, boats, pensions, bank accounts, insurance plans, or other assets;
- (vii) Extraordinary income of a child; ~~or~~
- (viii) Tax planning considerations. A deviation for tax planning may be granted only if the child would not receive a lesser economic benefit due to the tax planning; or
- (ix) Income that has been excluded under RCW 26.19.071(4)(h) if the person earning that income asks for a deviation for any other reason.

(b) **Nonrecurring income.** The court may deviate from the standard calculation based on a finding that a particular source of income included in the calculation of the basic support obligation is not a recurring source of income. Depending on the circumstances, nonrecurring income may include overtime, contract-related benefits, bonuses, or income from second jobs. Deviations for nonrecurring income shall be based on a review of the nonrecurring income received in the previous two calendar years.

(c) **Debt and high expenses.** The court may deviate from the standard calculation after consideration of the following expenses:

- (i) Extraordinary debt not voluntarily incurred;
- (ii) A significant disparity in the living costs of the parents due to conditions beyond their control;
- (iii) Special needs of disabled children;
- (iv) Special medical, educational, or psychological needs of the children; or
- (v) Costs incurred or anticipated to be incurred by the parents in compliance with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child.

- (d) **Residential schedule.** The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving temporary assistance for needy families. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.
- (e) **Children from other relationships.** The court may deviate from the standard calculation when either or both of the parents before the court have children from other relationships to whom the parent owes a duty of support.
- (i) The child support schedule shall be applied to the mother, father, and children of the family before the court to determine the presumptive amount of support.
- (ii) Children from other relationships shall not be counted in the number of children for purposes of determining the basic support obligation and the standard calculation.
- (iii) When considering a deviation from the standard calculation for children from other relationships, the court may consider only other children to whom the parent owes a duty of support. The court may consider court-ordered payments of child support for children from other relationships only to the extent that the support is actually paid.
- (iv) When the court has determined that either or both parents have children from other relationships, deviations under this section shall be based on consideration of the total circumstances of both households. All child support obligations paid, received, and owed for all children shall be disclosed and considered.
- (2) All income and resources of the parties before the court, new spouses or new domestic partners, and other adults in the households shall be disclosed and considered as provided in this section. The presumptive amount of support shall be determined according to the child support schedule. Unless specific reasons for deviation are set forth in the written findings of fact and are supported by the evidence, the court shall order each parent to pay the amount of support determined by using the standard calculation.
- (3) The court shall enter findings that specify reasons for any deviation or any denial of a party's request for any deviation from the standard calculation made by the court. The court shall not consider reasons for deviation until the court determines the standard calculation for each parent.
- (4) When reasons exist for deviation, the court shall exercise discretion in considering the extent to which the factors would affect the support obligation.
- (5) Agreement of the parties is not by itself adequate reason for any deviations from the standard calculation.

Sec. 5. RCW 26.19.080 and 1996 c 216 s 1 are each amended to read as follows:

<< WA ST 26.19.080 >>

- (1) The basic child support obligation derived from the economic table shall be allocated between the parents based on each parent's share of the combined monthly net income.
- (2) ~~Ordinary~~ Health care expenses costs are not included in the economic table. Monthly health care expenses that exceed five percent of the basic support obligation costs shall be considered extraordinary health care expenses. ~~Extraordinary health care expenses shall be shared by the parents in the same proportion as the basic child support obligation.~~ Health care costs shall include, but not be limited to, medical, dental, orthodontia, vision, chiropractic, mental health treatment, prescription medications, and other similar costs for care and treatment.
- (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.

(4) The court may exercise its discretion to determine the necessity for and the reasonableness of all amounts ordered in excess of the basic child support obligation.

NEW SECTION. Sec. 6. This act takes effect October 1, 2009.

Approved April 13, 2009.

Effective October 1, 2009.

WA LEGIS 84 (2009)

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APPX

1991 Wash. Legis. Serv. 1st Ex. Sess. Ch. 28 (S.S.B. 5996) (WEST)

WASHINGTON 1991 LEGISLATIVE SERVICE

52nd Legislature, 1991 1st Extraordinary Session

Additions are indicated by <<+ Text +>>

Deletions by <<- Text ->>

Changes in tables are made but not highlighted. Vetoed provisions
within tabular material are not displayed.

CHAPTER 28

S.S.B. No. 5996
CHILD SUPPORT

AN ACT Relating to child support; amending RCW 26.09.100, 26.09.170, 26.09.225, and 26.19.090; adding new sections to chapter 26.19 RCW; creating a new section; repealing RCW 26.19.010, 26.19.040, 26.19.060, 26.19.070, and 26.19.110; providing effective dates; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 26.09.100 and 1990 1st ex.s. c 2 s 1 are each amended to read as follows:

<< WA ST 26.09.100 >>

<<+(1)+>> In a proceeding for dissolution of marriage, legal separation, declaration of invalidity, maintenance, or child support, after considering all relevant factors but without regard to marital misconduct, the court shall order either or both parents owing a duty of support to any child of the marriage dependent upon either or both spouses to pay an amount determined under chapter 26.19 RCW.

<<+(2)+>> The court may require <<+automatic+>> periodic adjustments <<+or modifications+>> of <<+child+>> support. <<+That portion of any decree that requires periodic adjustments or modifications of child support shall use the provisions in chapter 26.19 RCW as the basis for the adjustment or modification. Provisions in the decree for periodic adjustment or modification shall not conflict with RCW 26.09.170 except that the decree may require periodic adjustments or modifications of support more frequently than the time periods established pursuant to RCW 26.09.170.+>>

<<+(3)+>> Upon motion of a party and without a substantial change of circumstances, the court shall modify the decree to comply with subsection (2) of this section as to installments accruing subsequent to entry of the court's order on the motion for modification.+>>

<<+(4)+>> The adjustment <<+or modification+>> provision may be modified by the court due to economic hardship <<+consistent with the provisions of RCW 26.09.170(4)(a)+>>.

Sec. 2. RCW 26.09.170 and 1990 1st ex.s. c 2 s 2 are each amended to read as follows:

<< WA ST 26.09.170 >>

(1) Except as otherwise provided in subsection (7) of RCW 26.09.070, the provisions of any decree respecting maintenance or support may be modified only as to installments accruing subsequent to the motion for modification and, except as otherwise provided in subsections (4), (5), <<-and->> (8)<<+, and (9)+>> of this section, only upon a showing of a substantial change of circumstances. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

- (2) Unless otherwise agreed in writing or expressly provided in the decree the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.
- (3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child or by the death of the parent obligated to support the child.
- (4) An order of child support may be modified one year or more after it has been entered without showing a substantial change of circumstances:
- (a) If the order in practice works a severe economic hardship on either party or the child;
 - (b) If a party requests an adjustment in an order for child support which was based on guidelines which determined the amount of support according to the child's age, and the child is no longer in the age category on which the current support amount was based;
 - (c) If a child is still in high school, upon a finding that there is a need to extend support beyond the eighteenth birthday to complete high school; or
 - (d) To add an automatic adjustment of support provision consistent with RCW 26.09.100.
- (5) An order or decree entered prior to June 7, 1984, may be modified without showing a substantial change of circumstances if the requested modification is to:
- (a) Require health insurance coverage for a child named therein; or
 - (b) Modify an existing order for health insurance coverage.
- (6) An obligor's voluntary unemployment or voluntary underemployment, by itself, is not a substantial change of circumstances.
- (7) The department of social and health services may file an action to modify an order of child support if public assistance money is being paid to or for the benefit of the child and the child support order is twenty-five percent or more below the appropriate child support amount set forth in the standard calculation as defined in <<-section 4(2) of this act->> <<+section 4 of this act+>> and reasons for the deviation are not set forth in the findings of fact or order. The determination of twenty-five percent or more shall be based on the current income of the parties and the department shall not be required to show a substantial change of circumstances if the reasons for the deviations were not set forth in the findings of fact or order.
- (8)(a) Except as provided in (b) and (c) of this subsection, all child support decrees may be adjusted once every twenty-four months based upon changes in the income of the parents without a showing of substantially changed circumstances. Either party may initiate the modification pursuant to procedures of RCW 26.09.175.
- (b) Parents whose decrees are entered before <<-the effective date of this act->> <<+July 1, 1990,+>> may petition the court for a modification after twelve months has expired from the entry of the decree or the most recent modification setting child support, whichever is later. However, if a party is granted relief under this provision, twenty-four months must pass before another petition for modification may be filed pursuant to (a) of this subsection.
- (c) A party may petition for modification in cases of substantially changed circumstances, under subsection (1) of this section, at any time. However, if relief is granted under subsection (1) of this section, twenty-four months must pass before a petition for modification under (a) of this subsection may be filed.
- (d) If, pursuant to (a) of this subsection, the court modifies a child support obligation by more than thirty percent and the change would cause significant hardship, the court may implement the change in two equal increments, one at the time of the entry of the order and the second six months from the entry of the order. Twenty-four months must pass following the second change before a petition for modification under (a) of this subsection may be filed.
- (e) A parent who is receiving transfer payments who receives a wage or salary increase may not bring a modification action pursuant to (a) of this subsection alleging that increase constitutes a substantial change of circumstances under subsection (1) of this section.
- <<+(9) An order of child support may be modified twenty-four months from the date of the entry of the decree or the last modification, whichever is later, based upon changes in the economic table or standards in chapter 26.19 RCW.+>>
- Sec. 3. RCW 26.09.225 and 1990 1st ex.s. c 2 s 18 are each amended to read as follows:

<< WA ST 26.09.225 >>

- <<+(1)+>> Each parent shall have full and equal access to the education and health care records of the child absent a court order to the contrary. <<+Neither parent may veto the access requested by the other parent.+>>
- <<+(2) Educational records are limited to academic, attendance, and disciplinary records of public and private schools in all grades kindergarten through twelve and any form of alternative school for all periods for which child support is paid or the child is the dependent in fact of the parent requesting access to the records.+>>
- <<+(3) Educational records of postsecondary educational institutions are limited to enrollment and academic records necessary to determine, establish, or continue support ordered pursuant to RCW 26.19.090.+>>

NEW SECTION. Sec. 4. A new section is added to chapter 26.19 RCW to read as follows:

DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Basic child support obligation" means the monthly child support obligation determined from the economic table based on the parties' combined monthly net income and the number of children for whom support is owed.
- (2) "Child support schedule" means the standards, economic table, worksheets, and instructions, as defined in this chapter.
- (3) "Court" means a superior court judge, court commissioner, and presiding and reviewing officers who administratively determine or enforce child support orders.
- (4) "Deviation" means a child support amount that differs from the standard calculation.
- (5) "Economic table" means the child support table for the basic support obligation provided in RCW 26.19.020.
- (6) "Instructions" means the instructions developed by the office of the administrator for the courts pursuant to RCW 26.19.050 for use in completing the worksheets.
- (7) "Standards" means the standards for determination of child support as provided in this chapter.
- (8) "Standard calculation" means the presumptive amount of child support owed as determined from the child support schedule before the court considers any reasons for deviation.
- (9) "Support transfer payment" means the amount of money the court orders one parent to pay to another parent or custodian for child support after determination of the standard calculation and deviations. If certain expenses or credits are expected to fluctuate and the order states a formula or percentage to determine the additional amount or credit on an ongoing basis, the term "support transfer payment" does not mean the additional amount or credit.
- (10) "Worksheets" means the forms developed by the office of the administrator for the courts pursuant to RCW 26.19.050 for use in determining the amount of child support.

NEW SECTION. Sec. 5. A new section is added to chapter 26.19 RCW to read as follows:

STANDARDS FOR DETERMINATION OF INCOME. (1) Consideration of all income. All income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent. Only the income of the parents of the children whose support is at issue shall be calculated for purposes of calculating the basic support obligation. Income and resources of any other person shall not be included in calculating the basic support obligation.

(2) Verification of income. Tax returns for the preceding two years and current paystubs shall be provided to verify income and deductions. Other sufficient verification shall be required for income and deductions which do not appear on tax returns or paystubs.

(3) Income sources included in gross monthly income. Except as specifically excluded in subsection (4) of this section, monthly gross income shall include income from any source, including:

- (a) Salaries;
- (b) Wages;
- (c) Commissions;
- (d) Deferred compensation;
- (e) Overtime;
- (f) Contract-related benefits;
- (g) Income from second jobs;
- (h) Dividends;
- (i) Interest;
- (j) Trust income;
- (k) Severance pay;
- (l) Annuities;
- (m) Capital gains;
- (n) Pension retirement benefits;
- (o) Workers' compensation;
- (p) Unemployment benefits;
- (q) Spousal maintenance actually received;
- (r) Bonuses;
- (s) Social security benefits; and
- (t) Disability insurance benefits.

(4) Income sources excluded from gross monthly income. The following income and resources shall be disclosed but shall not be included in gross income:

- (a) Income of a new spouse or income of other adults in the household;

- (b) Child support received from other relationships;
- (c) Gifts and prizes;
- (d) Aid to families with dependent children;
- (e) Supplemental security income;
- (f) General assistance; and
- (g) Food stamps.

Receipt of income and resources from aid to families with dependent children, supplemental security income, general assistance, and food stamps shall not be a reason to deviate from the standard calculation.

(5) Determination of net income. The following expenses shall be disclosed and deducted from gross monthly income to calculate net monthly income:

- (a) Federal and state income taxes;
- (b) Federal insurance contributions act deductions;
- (c) Mandatory pension plan payments;
- (d) Mandatory union or professional dues;
- (e) State industrial insurance premiums;
- (f) Court-ordered spousal maintenance to the extent actually paid;
- (g) Up to two thousand dollars per year in voluntary pension payments actually made if the contributions were made for the two tax years preceding the earlier of the (i) tax year in which the parties separated with intent to live separate and apart or (ii) tax year in which the parties filed for dissolution; and
- (h) Normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about which there is disagreement.

Items deducted from gross income under this subsection shall not be a reason to deviate from the standard calculation.

(6) Imputation of income. The court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed based upon that parent's work history, education, health, and age, or any other relevant factors. A court shall not impute income to a parent who is gainfully employed on a full-time basis, unless the court finds that the parent is voluntarily underemployed and finds that the parent is purposely underemployed to reduce the parent's child support obligation. Income shall not be imputed for an unemployable parent. In the absence of information to the contrary, a parent's imputed income shall be based on the median income of year-round full-time workers as derived from the United States bureau of census, current populations reports, or such replacement report as published by the bureau of census.

NEW SECTION. Sec. 6. A new section is added to chapter 26.19 RCW to read as follows:

STANDARDS FOR DEVIATION FROM THE STANDARD CALCULATION. (1) Reasons for deviation from the standard calculation include but are not limited to the following:

- (a) Sources of income and tax planning. The court may deviate from the standard calculation after consideration of the following:
 - (i) Income of a new spouse if the parent who is married to the new spouse is asking for a deviation based on any other reason. Income of a new spouse is not, by itself, a sufficient reason for deviation;
 - (ii) Income of other adults in the household if the parent who is living with the other adult is asking for a deviation based on any other reason. Income of the other adults in the household is not, by itself, a sufficient reason for deviation;
 - (iii) Child support actually received from other relationships;
 - (iv) Gifts;
 - (v) Prizes;
 - (vi) Possession of wealth, including but not limited to savings, investments, real estate holdings and business interests, vehicles, boats, pensions, bank accounts, insurance plans, or other assets;
 - (vii) Extraordinary income of a child; or
 - (viii) Tax planning considerations. A deviation for tax planning may be granted only if the child would not receive a lesser economic benefit due to the tax planning.
- (b) Nonrecurring income. The court may deviate from the standard calculation based on a finding that a particular source of income included in the calculation of the basic support obligation is not a recurring source of income. Depending on the circumstances, nonrecurring income may include overtime, contract-related benefits, bonuses, or income from second jobs. Deviations for nonrecurring income shall be based on a review of the nonrecurring income received in the previous two calendar years.
- (c) Debt and high expenses. The court may deviate from the standard calculation after consideration of the following expenses:

- (i) Extraordinary debt not voluntarily incurred;
 - (ii) A significant disparity in the living costs of the parents due to conditions beyond their control;
 - (iii) Special needs of disabled children; or
 - (iv) Special medical, educational, or psychological needs of the children.
- (d) Residential schedule. The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving aid to families with dependent children. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.
- (e) Children from other relationships. The court may deviate from the standard calculation when either or both of the parents before the court have children from other relationships to whom the parent owes a duty of support.
- (i) The child support schedule shall be applied to the mother, father, and children of the family before the court to determine the presumptive amount of support.
 - (ii) Children from other relationships shall not be counted in the number of children for purposes of determining the basic support obligation and the standard calculation.
 - (iii) When considering a deviation from the standard calculation for children from other relationships, the court may consider only other children to whom the parent owes a duty of support. The court may consider court-ordered payments of child support for children from other relationships only to the extent that the support is actually paid.
 - (iv) When the court has determined that either or both parents have children from other relationships, deviations under this section shall be based on consideration of the total circumstances of both households. All child support obligations paid, received, and owed for all children shall be disclosed and considered.
- (2) All income and resources of the parties before the court, new spouses, and other adults in the households shall be disclosed and considered as provided in this section. The presumptive amount of support shall be determined according to the child support schedule. Unless specific reasons for deviation are set forth in the written findings of fact and are supported by the evidence, the court shall order each parent to pay the amount of support determined by using the standard calculation.
- (3) The court shall enter findings that specify reasons for any deviation or any denial of a party's request for any deviation from the standard calculation made by the court. The court shall not consider reasons for deviation until the court determines the standard calculation for each parent.
- (4) When reasons exist for deviation, the court shall exercise discretion in considering the extent to which the factors would affect the support obligation.
- (5) Agreement of the parties is not by itself adequate reason for any deviations from the standard calculation.

Sec. 7. RCW 26.19.090 and 1990 1st ex.s. c 2 s 9 are each amended to read as follows:

<< WA ST 26.19.090 >>

STANDARDS FOR POSTSECONDARY EDUCATIONAL SUPPORT AWARDS. <<+(1)+>> The child support schedule shall be advisory and not mandatory for postsecondary educational support.

<<+(2)+>> When considering whether to order support for postsecondary educational expenses, the court shall determine whether the child is in fact dependent and is relying upon the parents for the reasonable necessities of life. The court shall exercise its discretion when determining whether and for how long to award postsecondary educational support based upon consideration of factors that include but are not limited to the following: Age of the child; the child's needs; the expectations of the parties for their children when the parents were together; the child's prospects, desires, aptitudes, abilities or disabilities; the nature of the postsecondary education sought; and the parents' level of education, standard of living, and current and future resources. Also to be considered are the amount and type of support that the child would have been afforded if the parents had stayed together.

<<+(3)+>> The child must <<-be enrolled->> <<+enroll+>> in <<+an accredited academic or vocational+>> school, <<+must be+>> actively pursuing a course of study <<+commensurate with the child's vocational goals+>>, and <<+must be+>> in good academic standing as defined by the institution <<-or->><<+. T+>>he court-ordered postsecondary educational support <<-may->> <<+shall+>> be automatically suspended during the period or periods the child fails to comply with these conditions. <<-The court in its discretion may order that the payment be made directly to the parent who has been receiving the transfer payments, to the educational institution if feasible, or to the child.->>

<<+(4) The child shall also make available all academic records and grades to both parents as a condition of receiving postsecondary educational support. Each parent shall have full and equal access to the postsecondary education records as

provided in RCW 26.09.225.+>>

<<+(5)+>> The court shall not order the payment of postsecondary educational expenses beyond the child's twenty-third birthday, except for exceptional circumstances, such as mental, physical, or emotional disabilities.

<<+(6) The court shall direct that either or both parents' payments for postsecondary educational expenses be made directly to the educational institution if feasible. If direct payments are not feasible, then the court in its discretion may order that either or both parents' payments be made directly to the child if the child does not reside with either parent. If the child resides with one of the parents the court may direct that the parent making the support transfer payments make the payments to the child or to the parent who has been receiving the support transfer payments.+>>

<< Repealed: WA ST 26.19.010, 26.19.040, 26.19.060, 26.19.070, 26.19.110 >>

NEW SECTION. Sec. 8. The following acts or parts of acts are each repealed:

- (1) RCW 26.19.010 and 1988 c 275 s 2;
- (2) RCW 26.19.040 and 1990 1st ex.s. c 2 s 20, 1988 c 275 s 5, & 1987 c 440 s 2;
- (3) RCW 26.19.060 and 1988 c 275 s 7;
- (4) RCW 26.19.070 and 1990 1st ex.s. c 2 s 6; and
- (5) RCW 26.19.110 and 1990 1st ex.s. c 2 s 12.

NEW SECTION. Sec. 9. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 10. Sections 1 through 9 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect September 1, 1991.

NEW SECTION. Sec. 11. Captions as used in this act do not constitute any part of the law.

Approved July 11, 1991.

Effective September 1, 1991.

WA LEGIS 1ES 28 (1991)

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on the 17th day of April 2020, the within document described as Opening Brief of Appellant was delivered to the following persons in the manner indicated:

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|--|---|
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