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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

NO. 284697 - III

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SUPREME COURT  
OF THE STATE OF WASHINGTON

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In Re the Marriage of:

CAROL MARIE SCHNEIDER, f/k/a CAROL MARIE ALMGREN

Respondent,

v.

JEFFREY JOSEPH ALMGREN,

Petitioner/Appellant.

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PETITION FOR REVIEW

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### **IDENTITY OF PETITIONER**

1. Jeffrey Almgren asks this Court to accept review of the Court of Appeal, Division III, decision regarding the appeal from the Superior Court of Asotin County, State of Washington.
2. The Petitioner requests that the Court review the decision issued by the Court of Appeals, Division III issued on August 24, 2010. No motion for reconsideration was filed. A copy of the opinion is attached as Appendix 1.

### **ISSUES PRESENTED FOR REVIEW**

1. This is a matter of first impression for the State of Washington, dealing with the interpretation of the Uniform Interstate Family Support Act. RCW 26.21 A.550(3)(4), (hereinafter known as UIFSA) which provides that the law of the State that issued the initial controlling child support order governs the duration of a child support obligation in all subsequent proceedings to modify child support orders. The original Court that had jurisdiction of the Almgren divorce was Nebraska. Because this is a matter of first impression in the State of Washington, there is no Washington Supreme Court decision in conflict. There are no other Court of Appeal decisions. The issue deals with a Uniform Act and would involve an issue of substantial public interest that should be determined by the Washington Supreme Court and not this unpublished decision by the Court of Appeals, Division III. The Court of Appeals decision is contrary to all decisions from the other states on this issue.
2. The Court of Appeals also failed to consider the record in its determination that the Father produced no verified proof that his income changed. Mr. Almgren and Ms. Schneider both lost their jobs after the motion for post secondary education was filed. Mr. Almgren testified, under oath, that his income had changed. Both parties acknowledge the income change and the trial court acknowledge the same. The trial court ultimately determined that it would use prior income information because the Court believed that both parties would become re-employed within six (6) months. The Court of Appeal, Division III, simply ignores the fact that Mr. Almgren testified under oath about his unemployment and his change of income.

## A. STATEMENT OF THE CASE

On December 5, 2005, Ms. Schneider filed her request to domesticate several Nebraska Orders. The Divorce Decree was dated June 6, 1997, while the others were dated June 22, 1999, August 31, 2001, and September 4, 2001. CP, pp.1-19. The parties have two children, Amanda Almgren, born December 24, 1990, and J.D.A., born October 31, 1993. CP, pp. 2-3. Child support was set by the Nebraska trial court as follows:

“The Respondent (Mr. Almgren) shall pay as child support the sum of \$421 per month commencing June 1, 1997, and continuing on the first day of each month thereafter as long as there are two minor children that require support. When there is one minor child requiring support, the child support shall be in the sum of \$293.” (Emphasis added.)

CP at p.3.

At the time of the Nebraska divorce, the age of majority was 19, as it is now. CP, p.310. As a result of Ms. Schneider’s domestication of the Nebraska Orders, a motion for modification was filed and an Order was entered by the Superior Court modifying child support for the then minor children of the parties. CP, pp. 20-38. The 2007 Washington Order entered by the Court had a provision regarding post-secondary education support: “The right to petition for post-secondary support is reserved, provided that the right is exercised before support terminates as set forth in paragraph 3.13.” CP, p. 25. Paragraph 3.13 dealt with child support being until the age

of 18 or as long as the child remains enrolled in high school. CP, p. 24. On January 21, 2009, Ms. Schneider petitioned for modification, and alleged that the parties' oldest child had turned 18 on December 24, 2008. Ms. Schneider filed a declaration, which indicated as follows:

“Amanda resides with me and I provide the majority of her support...” (Emphasis added.)

CP, p.50.

Mr. Almgren, filed his own motion and a declaration for modification of child support. He was terminated from his employment and would only be receiving a minimal severance package and was applying for unemployment. CP, pp. 244-245. The matter was heard on July 14, 2009, at 1:30 p.m. RP, Vol. A, p. 19, l. 3-4. Ms. Schneider was called to testify first. Ms. Schneider was asked what state she was originally divorced in. She stated Nebraska. RP, Vol. B, p. 25, ll. 6-8. She was then asked, whether the original Decree of Divorce indicated that child support would stop at the age of majority. She indicated as follows: “I would assume.” RP, Vol. B, ll. 14-17. Mr. Broyles asked his client the following, “Ah, even with that, is Amanda going to remain dependant on you and your husband while she is in college? Answer: “Yes, she will.” RP, Vol. B, p. 39, ll. 18-20 and 23. Mr. Broyles asked Amanda the following: “The basics of life your dependant on your mom and stepdad? Answer: Yeah.” RP, Vol. B, p. 50, ll. 10-12.

Mr. Almgren was then called to testify under oath. Mr. Almgren was asked if he was employed and he indicated he was not. RP, Vol. B, p. 52, l. 17. He then testified that he was laid off due to lack of work. RP, Vol. B, p. 53. Mr. Almgren described that his employer had also let go of other employees and that there was no hope of regaining his job with his employer. RP, Vol. B, p. 54. Mr. Almgren then described that he had applied for unemployment through the State of Minnesota on June 11, 2009, and that he was receiving a net of \$375 a week. RP, Vol. B, p. 54, ll. 22-23. He then described receiving an award letter from the state which indicated he would receive from June 7, 2009, through June 5, 2010, \$11,466.00 as his benefit for unemployment. RP, Vol. B, p. 55, ll. 3-5. He then was asked about the prospects for a job with his qualifications in his area. Mr. Almgren testified as follows: "Well, it's in the same field. It is not very good right now. It doesn't look very good. I've been searching ever since I've been laid off and I've - - and I might have to be going into something else." RP, Vol. B, p. 55, ll. 11-14. He was then asked what the economy was like where he lived. He testified, "It wasn't very good. It's not a very good outlook." RP, Vol. B, p. 55.

The trial court then heard argument and decided that child support would remain the same for the parties' youngest child at \$343.87. RP, Vol. B, p. 75, ll. 2-3. The Court noted to the parties,

“Ah, right, now I’ve got two parents who are out of work, neither of which wanted to be out of work. Ah, and as father’s counsel said, we’re approaching the worst economy that we’ve had since The Great Depression. But Washington law is real clear. Ah, every person - - every, ah, - - has the right to ask their parents to chip in towards their college education if they choose to go to college.

Ah, and so, what do I think is fair in the case as far as do I look just at this instance snapshot that both parents are out of work and set it at minimum wage and let it go when, ah, hopefully in less than six months both parents will rebound and be back having jobs that pay near what they were making before? Ah, to me, I’ve got to go on, ah, their track record on income, ah, not what some statistic says they are supposed to be able to make. I - - realize I’m allowed to do that, but I choose not to in this case. I’m going to go on what their earnings were, ah, most recently and, ah, calc - - you know, before they lost their jobs. Ah, that’s the - - that’s the figure I’m using, a, generally.”

RP, Vol. B, p. 74, ll. 2-22.

The trial court stated:

“I don’t find any compelling reason to deviate from my predisposition, if you will. I kind of go 1/3, 1/3, 1/3.

Ah, for dad, I’m going to order to pay yours, ah, at the rate of \$500 per month and that will be for 10 months of each year. Ah, that will be, ah, from September, ah, 1<sup>st</sup> - - that is your first payment. And you’ll pay it through - - what would be - - ah - - June 1<sup>st</sup> - - would be your last payment each year. You’ll pay ten payments of \$500 each starting September 1<sup>st</sup>.”

RP, Vol. B, p. 76, ll. 10-19.

A notice of presentment hearing was heard on September 1, 2009. Counsel for Mr. Almgren filed a motion to reconsider regarding the issue of the UIFSA, RCW 26.21A.550(3)(4). Appendix 2 CP, pp. 305-313. An objection to orders was also filed. CP, pp. 314-316. CP, p. 305. The trial court was cited to the age of majority in Nebraska, which is 19 and the Court was given a Nebraska case, *Wills v. Wills*, 16 Neb.App. 559, 745 NW.2d 924 (Neb. Ct.App. 2008). The Court, after hearing the argument regarding the UIFSA indicated as follows,

“Certainly the underlying policy of the Uniform statute makes sense. It, ah, obviously would discourage form shopping if somebody got divorced in a state that didn’t - - that did not allow post-secondary, ah, support, and then mom and children move to a state that did and then she files for modification asking to - - before the child turns 18, asking for support past 18, or 19 as the case may be.”

RP, Vol. C, p. 10, ll. 7-14.

The trial court entered an order denying the motion to reconsider on September 8, 2009. CP, p. 338. The Notice of Appeal was filed on September 21, 2009. CP, p. 340. The Court of Appeals, Division III was assigned the case and made its decision without oral argument. Its decision was issued on August 24, 2010. This petition for review followed.

## B. ARGUMENT

### **The Court of Appeals, Division III. committed error when it upheld the trial court's decision in ordering post-secondary education support for the parties' adult child past the age of 19.**

Neither parent was employed at the time the trial Court heard testimony in July 2009. CP, pp. 184-189. Mr. Almgren testified that he had an income of \$375 per week. RP, Vol. B, p. 54. The trial court made a finding that the country was "approaching the worst economy that we've had since The Great Depression." RP, Vol. B, p. 74, ll. 4-5.

The Nebraska divorce decree noted that child support would end at the age of majority. CP, p. 3. The age of majority in Nebraska in 1997, the year of the parties' divorce, was 19. CP, p. 305-313. In *In the Matter of the Marriage of Owen*, 126 Wn.App. 487, 108 P.3d 824, (Ct.App. Div 1 2005) *review denied*, 155 Wash.2d 1022 (2005), the Court found, "UIFSA has been adopted by all states and controls the subject matter jurisdiction in this case."

At p. 449. The Court noted:

"The Uniform Interstate Family Support Act (UIFSA), which has been adopted by all states, governs the procedure for establishing, enforcing, and modifying child support and spousal support orders and for determining parentage when more than one state is involved in these proceedings." (Cite omitted.)

At p. 494, footnote 4.

The pertinent part of the UIFSA is found at RCW 26.21A.550(3)(4),

which specifically limits the Washington court's ability to modify child support past the age of majority from the issuing state. See Appendix 2 Amanda Almgren turned 19 on December 24, 2009. There does not seem to be any case law in the State of Washington that comments on these provisions of the UIFSA. However, other states across the country have cases that are contrary to the decision of the Court of Appeals.

Ms. Schneider domesticated the Nebraska order pursuant to the UIFSA. CP, pp. 1-19. The 2007 Washington order reserved the issue of post high school education. Under the terms of the statute in Nebraska, support for Amanda would continue until she turned 19. It is submitted that the Superior Court did not have jurisdiction to award any form of child support to either Almgren children past the age of 19, pursuant to the UIFSA, RCW 26.21A.550(4):

“In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by the order precludes imposition of a further obligation of support by a tribunal of the state.” (Emphasis added.)

This Court must review case law from other states since there is no case law in Washington regarding the issues raised involving the UIFSA. The New Hampshire Supreme Court, *In re Scott* 999 A.2d 229 (N.H. 2010), interpreted the UIFSA contrary to the Court of Appeals. This 2010 decision

relied upon the ordinary rules of statutory construction and upon the official comments to the UIFSA. The New Hampshire Supreme Court noted that the original decision from Massachusetts was registered and then modified in New Hampshire in 2003. The Massachusetts duration provision applied even though New Hampshire had properly assumed jurisdiction under the UIFSA and had modified the original Massachusetts child support order in 2003. Duration was a “non-modifiable” aspect of the issuing State’s original child support order.

*Reinsch v. Reinsch*, 259 Neb. 564, 611 NW.2d 86 (Neb.S.Ct. 2000), discusses the enactment of the Nebraska child support guidelines in October of 1987 and the fact that in Nebraska the age of majority is 19. The *Reinsch* Court stated, “Specifically, the Court of Appeals concluded the enactment of section 42-371.01 in 1997 was a material change in circumstance and reason that ‘while the age of majority was 19 when the court first entered the decree, the statutory law has now changed to make child support to age 19 mandatory unless the child is emancipated’. *Reinsch v. Reinsch*, 8 Neb.App. 852, 856, 602 N.W.2d 261 (Neb.Ct.App. 1999).” In Nebraska, the public policy of the state provided that parents have a duty to support their minor children until they reach majority or are emancipated. *Waldbaum v. Waldbaum*, 171 Neb. 625, 107 N.W.2d 407 (1961).

The Nebraska statute specifically notes that child support terminates

when the child reaches 19 years of age, marries, dies or is emancipated by a court of competent jurisdiction. Nebraska RS 42-371.01.<sup>1</sup> See Appendix 3.

In *Wills v. Wills*, 16 Neb.App. 559, 745 NW.2d 924 (Neb. Ct.App. 2008), the original child support order came from New Mexico, which had 18 years of age as the termination age for child support while Nebraska had 19 years. The Nebraska court determined that the 18 year time frame barred the Nebraska court from ordering child support past the age of 18.

This Court on review has to look at UIFSA's purpose and give to RCW 26.21A.550(3)(4) a reasonable construction which best achieves that purpose rather than a construction which would defeat it. The Court of Appeals upholding the trial decision defeats the purpose of the UIFSA. The Court of Appeals opinion does not discuss or even reference the official commentary of the UIFSA.

The Court of Appeals conceded that Nebraska was the issuing state. Opinion at p.6 The Court of Appeals decision is contrary to every reported case that counsel could find from the other states. In *In re Marriage of Doetzl*, 31 Kan.App.2d 331, 65 P.3d 539 (Kan.App., 2003), the Kansas court found it lacked jurisdiction to modify the duration of child support obligation

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<sup>1</sup> Nebraska RS 72-371.01

(1)An obligor's duty to pay child support for a child terminates when (a) the child reaches nineteen years of age, (b) the child marries, (c) the child dies, or (d) the child is emancipated by the court of competent jurisdiction, unless the court order for child support specifically extends child support after such circumstance.

which was issued by a Missouri court which allowed child support beyond the age of majority. See also *State ex rel. Harnes v. Lawrence*, 140 N.C.App. 707, 538 S.E.2d 223 (N.C.App.,2000). In *Robdau v. Com.*, 35 Va.App. 128, 543 S.E.2d 602 (Va.App.,2001), the court observed generally that if it were to rule that Virginia lacked jurisdiction to enforce the child support order after the child reached the age of majority, parents obligated to pay support would be rewarded by moving to another state with a lower age requirement for support. Through such forum shopping, a parent would be able to control the duration of child support which would undermine the very purpose of the UIFSA. The Court of Appeal decision ignored this problem. The following cases also support Mr. Almgren's position over the opinion of the Court of Appeals. *C.K. v. J.M.S.*, 931 So.2d 724 (Ala.Civ.App.,2005); *Holbrook v. Cummings*, 132 Md.App. 60, 750 A.2d 724 (Md.App.,2000); and *Matter of Marriage of Cooney*, 150 Or.App. 323, 946 P.2d 305 (Or.App.,1997).

Attached as Appendix 4 is a copy of Idaho Code Section 7-1053 which corresponds to RCW 26.21A.550. The official comment to the UIFSA dealing with modification of child support from another state follows the Idaho Code section. The official comment interpreting RCW 26.21A.550 specifically notes:

“The initial controlling order may be modified and replaced by a new controlling order in accordance with the terms of sections 609-615 [sections 7-1051 to

7-1057], but the duration of child support obligations remain constant, even though virtually every other aspect of the original order may be changed.”  
(emphasis added)

The official comment condemns the attempt by some courts to “subvert” the policy of limiting the duration of child support to the law of the initial state by indicating that a new time frame could be entered because completion of the original duration didn’t inhibit the imposition of a new obligation. This prohibited action noted by the official comment is exactly what the Court of Appeal did in its opinion. Opinion at p. 8 **Washington is never going to be the” initial controlling order” state.** The fact that Washington becomes the state with continuing exclusive jurisdiction is not really relevant to the issue of when child support ends. The Court of Appeals noted as follows:

“Mr. Almgren was still obligated to pay child support for Amanda when the trial court entered the child support order of September 1, 2009, because Amanda was not yet 19. And the September 2009 order specifically extended Mr. Almgren’s duty until Amanda’s 23<sup>rd</sup> birthday.” CP at 329 (Order of Child Support, Section 3.14). “So even assuming the UIFSA applied, the statute gave the trial court authority to extend Mr. Almgren’s child duty on September 1, 2009.”

Opinion at p. 8

The Court of Appeals seems to put emphasis on the following words from the Nebraska statute: “... unless the court order for child support

specifically extends child support after such circumstances.”<sup>2</sup> Opinion at p 7. However, the Court of Appeals doesn’t cite to any Nebraska case law that supports its position regarding what the Nebraska statute actually means. The language noted above simply refers to a child being emancipated in Nebraska. The original Nebraska order did not set out any specific justification for extending child support “after such circumstances”. The Court of Appeals for Washington superimposes Washington’s statutory scheme and justification for child support after the age of majority onto the language from the Nebraska statute. If Nebraska wanted post-secondary education support as part of its statutory structure, it certainly could have set that out. The Court of Appeals cites to *Wills v. Wills*, 16 Neb.App. 559, 745 NW.2d 924 (Neb. Ct.App. 2008) . Opinion at pp 6 and 7. However, the Court of Appeals ignores *Wills* discussion of the official commentary to the UIFSA, which indicates that the duration of the support obligation remains fixed despite the subsequent residence of the parties in states with different duration of child support. **The original Washington modification did not modify the Nebraska date of termination. It simply left open the ability for child support for Amanda to be expanded from age 18 and graduation of high**

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<sup>2</sup> Nebraska RS 72-371.01(1)

(1)An obligor’s duty to pay child support for a child terminates when (a) the child reaches nineteen years of age, (b) the child marries, (c) the child dies, or (d) the child is emancipated by the court of competent jurisdiction, unless the court order for child support specifically extends child support after such circumstance

**school to the age of 19.** Amanda Almgren turned 19 on December 24, 2009.

The Court of Appeals also notes:

“The UIFSA would not have prohibited the trial court from extending Mr. Almgren’s child support duty in any event. It would have prohibited the extensions only if Mr. Almgren had already fulfilled the duty or if Nebraska law did not allow such an extension, RCW 26.21A.550(3)(4). But Mr. Almgren had not fulfilled his duty before it was extended, Nebraska permits the extension. Mr. Almgren’s original child support obligation to his daughter was set to end when she reached the age of majority. In Nebraska, the age of majority is 19 and the obligation to pay support ends when a child reaches 19 unless the child support order extends the duty; .....

Opinion at p. 7

The Court of Appeals does not cite to one case from any state that supports this interpretation of the UIFSA. The Court of Appeals does not discuss the official commentary to the Uniform Act. Most state courts find the Uniform Acts official commentary to be very helpful in interpreting what the Uniform Act means. See *Groseth v. Groseth*, 600 NW 2.d 159 (Neb 1999). In *Zetterman v. Zetterman* 512 NW2.d 622 (Neb. 1994), the Nebraska court noted that the district courts in Nebraska cannot order a parent to contribute to the support of children beyond their age of majority and cited to *Kimbrough v. Kimbrough*, 422 NW2.d 556 (Neb. 1988) and *Meyers v. Meyers*, 383 NW2.d 784 (Neb. 1986). The court can also look at *Palagi v. Palagi*, 627 NW2.d 765 (Neb. Ct. App. 2001). The *Palagi* court cited to the UIFSA to support its finding that the age of majority is a “non-modifiable”

provision of a support order. There is no case law in the State of Nebraska that allows modification of child support past the age of 19. *Henderson v. Henderson*, 653 NW2.d 226 (Neb. 2002). The *Henderson* court stated :

“The *Meyers* court found that section 42-364, was clear and unambiguous in conferring authority to compel divorce parents to support minor children, but also clear and unambiguous in conferring no authority for the support of adult children”.

*Henderson* at p 230

Please note that NEBRASKA RS 42-351, provides that trial courts have jurisdiction in divorce action to render judgments and make order concerning the custody and support of minor children. The position of Nebraska courts have not changed since the *Waldbaum v. Waldbaum* 107 NW2.d 407 (Neb. 1961) decision. The *Waldbaum* decision is 49 years old, however it is still cited with authority in the State of Nebraska. There is not one case that can be found that indicates child support can be ordered past the age of 19 in Nebraska. See *Boamah-Wiafe v. Rashleigh*, 614 NW2.d 778 (Neb. Ct. App. 2000); See also *Foster v. Foster*, 662 NW2.d 191 (Neb. 2003).

The Washington appellate courts have determined that a modification regarding post-secondary support may only be made upon a showing of “compelling” circumstances. *In re Marriage of Gimlett*, 95 Wash.2d 699, 629 P.2d 450 (1981) Where are the compelling circumstance on this record?

*In re Marriage of Scanlon*, 109 Wn.App. 167, 180-181, 34 P.3d 877 (Ct.App. Div. 1 2001). A compelling circumstance in this case is the fact that Mr. Almgren went from making approximately \$3,300 per month to \$375 per week. Both Ms. Schneider and Amanda Almgren testified that the reasonable necessities of life were being supplied by Ms. Schneider and not Mr. Almgren. RP, Vol. B, pp. 39, 50. See also CP, p.50.

2.

**The Court of Appeals committed error by upholding the trial court's decision in failing to reduce child support for the parties' minor child.**

The trial court disregarded the testimony about the unemployed parents and just assumed that in six months the parties could find employment in "the worst economic environment since The Great Depression". RP, Vol. B, p. 74, ll. 3-5. The trial court judge had no information that Mr. Almgren could simply bounce back within six months. There was a substantial and material change in circumstances regarding the employment of the parties. They both were unemployed at the time of the July 2009 hearing. The father's wages and salaries are noted as "imputed" at \$3,826. CP at p.286. Mr. Almgren's lack of employment was not due to him voluntarily quitting his job. He was terminated from his position because there was no work available. Income will not be imputed to an unemployed parent. RCW 26.19.071(6). See *In re the Marriage of Brockopp*, 78 Wn.App.

441, 898 P.2d 849 (Ct.App. Div 2 1995); *In re the Marriage of Blickenstaff*, 71 Wn.App. 489, 859 P.2d 646 (Ct.App. Div 2 1993). Child support for the parties remaining minor child, should have been modified downward to reflect Mr. Almgren's unemployment income.

Washington appellate courts have determined that in applying RCW 26.19.080(1) the trial court must determine each parent's proportion of combined net income before allocating support between them. *Newell v. Newell*, 117 Wn.App. 711, 72 P.3d 1130 (Ct.App. Div 1 2003). The Court ordered Mr. Almgren to pay \$843.87 for ten months and \$343.87 for twelve months; i.e. \$5,000 plus \$4,126.44 for a total of \$9,126.44. CP at p 292. Mr. Almgren testified under oath that his unemployment award for the year was \$11,466. Therefore, the child support awarded would be approximately 80% of his unemployment income. The trial court had evidence that Ms. Schneider was providing the majority of support for Amanda. See RCW 26.19.090(2) Appendix 5. There is no evidence on this record that Amanda was relying on Mr. Almgren for the "reasonable necessities of life". In fact, the record is just the opposite.

The child support order noted,

"The Court is aware that both parents have currently lost their jobs, however, there is more than enough higher levels of education and technical education that they should both be readily re-employable. The court has chosen to use 2008-2009 actual to the date of

termination as imputed income for both parties.”  
(emphasis added)

CP, p. 326.

There is no evidence of either parent being voluntarily unemployed or underemployed. *State v. ex rel. Stout v. Stout*, 89 Wn.App. 118, 948 P.2d 851 (Ct. App. Div. I 1997) is instructive. The *Stout* court determined that a parent’s child support obligation shall not reduce his net income below the need standards established by DSHS. The *Almgren* trial court reasoned that the parties would be able to get back to work within six (6) months. The *Stout* court went on to state:

“The Court exercises it’s discretion in an untenable and manifestly unreasonable way when it essentially guesses at an income amount. Here there was ample reliable evidence for the court to set an accurate income estimate, but the court ignored it.”

At p. 125.

The Court of Appeals, in its opinion seems to have held it against Mr. Almgren that he did not provide his employer’s termination letter, his unemployment award letter or any other written evidence verifying his unemployment income. Opinion at p. 13

Mr. Almgren testified, under oath, that he was receiving unemployment benefits of \$441.00 per month up to \$11,466.00 for the year from June 27, 2009 through June 5, 2010. His testimony was subject to cross examination. RP, Vol B pp 52-55 generally. The statute referred to in the

Court of Appeals opinion is RCW 26.19.071(1)(2), which specifically indicates “other sufficient verification shall be required for income and deductions which do not appear on tax returns or pay stubs.” Mr. Almgren testified under oath regarding his unemployment income. The fact that he didn’t supply a piece of paper that said the exact same thing should not be held against Mr. Almgren. RCW 26.19.071 requires verified income information, under oath testimony certainly qualifies as verification. The trial court, in this case, did not find that Mr. Almgren’s testimony was faulty or lacking in credibility. The trial court simply determined that the current loss of jobs and income was a temporary matter and that both parties should be readily re-employable.

The Court of Appeals clearly failed to give the proper consideration to Mr. Almgren’s under oath testimony. This was a case that was not determined simply on the pleadings, it was determined based on under oath testimony, which was subject to cross examination. RCW 26.19.071(1) states in pertinent part:

“All income and resources of each parent household shall be disclosed and considered by the court when the court determines the child support obligations of each parent. Only the income of the parents of the children who 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 calculation the basic child support obligation.”

On this record all income and resources of each parents household were disclosed. Mr. Almgren 's testimony was not challenged so there wasn't a need to provide other written evidence verifying his unemployment income. The ex-wife never challenged Mr. Almgren's credibility with regard to his unemployment or his unemployment income information. The trial court accepted Mr. Almgren's testimony as verification of his current unemployment income information.

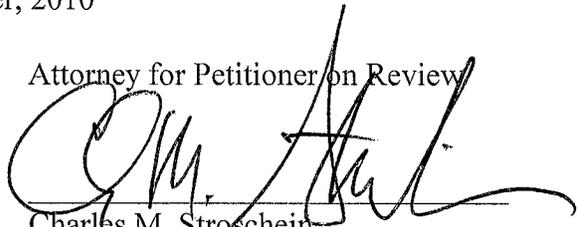
### C. CONCLUSION

Mr. Almgren has presented facts, argument, case law and statutory construction that support his position on review. The Court of Appeals did not cited one case that supports its position regarding the interpretation of RCW 26.21A.550 and ignored the reality of the financial condition of the father.

The court on review must determine that the interpretation of the Uniform Interstate' Family Support Act, RCW 26.21A.550 by the trial court and the Court of Appeal was incorrect.

DATED this 22 day of September, 2010

Attorney for Petitioner on Review



Charles M. Stroschein  
WSBA No. 34711

## **E. APPENDIX**

## APPENDIX 1

**RECEIVED**

**AUG 25 2010**

CHARLES M. STROSCHEIN  
ATTORNEY  
208-743-9516

**FILED**

**AUG 24 2010**

In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

|                                     |   |                            |
|-------------------------------------|---|----------------------------|
| <b>In re:</b>                       | ) | <b>No. 28469-7-III</b>     |
|                                     | ) |                            |
| <b>CAROL MARIE SCHNEIDER, f/k/a</b> | ) |                            |
| <b>CAROL MARIE ALMGREN,</b>         | ) |                            |
|                                     | ) | <b>Division Three</b>      |
| <b>Respondent,</b>                  | ) |                            |
|                                     | ) |                            |
| <b>and</b>                          | ) |                            |
|                                     | ) |                            |
| <b>JEFFREY JOSEPH ALMGREN,</b>      | ) |                            |
|                                     | ) | <b>UNPUBLISHED OPINION</b> |
| <b>Appellant.</b>                   | ) |                            |

SWEENEY, J. —The appellant-father here challenges a trial court’s child support order awarding postsecondary educational support to the parties’ daughter and denying his request to lower his child support obligation to the parties’ minor son. He contends that the Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW, did not authorize the award for the daughter. The UIFSA governs a state’s right to enforce or modify another state’s child support order. A Washington order was being modified here, so the UIFSA does not apply. Moreover, an award of postsecondary educational support is proper if based on a finding that the child is dependent and relying on the parents for basic necessities and based on the court’s consideration of different factors

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about the child and the parents. RCW 26.19.090(2). The record here supports the court's finding that the daughter relied on both parties for basic necessities. And it shows the court properly considered factors listed in the statute. The award was therefore proper. The court's decision not to reduce the father's child support obligation to the parties' minor son was also proper. A trial court may adjust a child support order once every 24 months based upon changes in income. RCW 26.09.170(9)(a). But the father produced no proof that his income changed. We, therefore, affirm the court's order of child support and its findings and conclusions.

#### FACTS

Jeffrey Almgren and Carol Schneider's marriage was dissolved by a district court in Stanton County, Nebraska, on June 6, 1997. The court's decree of dissolution awarded Ms. Schneider custody of the couple's two children, daughter Amanda Almgren and son J.D.A. Amanda's birthday is December 24, 1990, and J.D.A.'s birthday is October 31, 1993. The decree ordered that Mr. Almgren pay \$421 per month as long as both children are minors and then \$293 per month when only J.D.A. is a minor.

The decree gave Mr. Almgren the right to claim Amanda as a dependent exemption for tax purposes, and it gave Ms. Schneider the right to claim J.D.A. It also ordered that Mr. Almgren pay 45 percent of health care costs not covered by insurance.

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The court also entered orders that modified visitation terms and added a health insurance provision to the parties' decree on June 22, 1999, and September 4, 2001, respectively.

Sometime after the Nebraska court entered the original decree, Mr. Almgren moved to Minnesota and Ms. Schneider and the children moved to Washington. In December 2005, Ms. Schneider registered the Nebraska decree and orders in Asotin County Superior Court in Washington. She moved to modify Mr. Almgren's child support obligation under the Nebraska decree and asked the court to review the dependent tax exemption award.

In January 2007, Asotin County Superior Court entered an order of child support that increased Mr. Almgren's child support obligation to \$343.87 per child per month. The court ordered Mr. Almgren to pay child support "until the children reach the age of 18 or as long as the children remain enrolled in high school, whichever occurs last, except as otherwise provided below in Paragraph 3.14." Clerk's Papers (CP) at 24. It also ordered that Mr. Almgren pay 47.76 percent of extraordinary health care expenses exceeding \$72.00. The order reserved Ms. Schneider's right to petition for postsecondary educational support provided that she exercise the right before Mr. Almgren's support obligation terminated. And the following language supplemented the original tax exemption provision: "Once [Amanda] has reached the age of majority, the parties shall alternate using JDA as a tax exemption." CP at 25.

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Ms. Schneider moved to modify the 2007 child support order in January 2009 because Amanda was “in need of post secondary educational support because the child is in fact dependent and is relying upon the parents for the reasonable necessities of life.” CP at 40. In June 2009, Mr. Almgren moved to adjust his child support obligation based on a claim that he lost his job due to cutbacks. Ms. Schneider lost her grant-funded job around the same time. And both reported that their attempts to find new employment had been unsuccessful.

The court held a hearing, took testimony, and listened to argument on the motions in July 2009. On September 1, 2009, the court entered the order of child support that is the subject of this appeal. It found that Mr. Almgren and Ms. Schneider had been unemployed since June 2009 but were employable despite the economy because of their education and training. Accordingly, the court used historical incomes from 2008 and 2009 to calculate their child support obligations. It then ordered Mr. Almgren to continue paying \$343.87 per month for J.D.A. and it ordered him to pay \$5,000 per year for Amanda’s postsecondary educational support until her 23rd birthday. It found that the amount ordered in child support for J.D.A. was a deviation from the standard calculation because it was lower than the standard calculation. And it based its postsecondary educational support award on these findings:

- 2) A.J.A’s post-secondary support: The Court finds that Amanda is in fact dependent and is relying upon the parents for the reasonable

necessities of life. The child has graduated from high school in May of 2009 with sufficient grades and aptitude to pursue a college education. In fact, the child has applied and been accepted and plans to attend [Eastern Washington] University commencing with the Fall term of 2009. Significantly, A.J.A. has taken the pre-college tests, is motivated to attend, has the potential to go and succeed and her Mother and Stepfather have a desire for the children to attend college. If the parents had not divorced they would have supported college course study. During the marriage Carol Almgren completed Bachelor and Master Degree[s] and Jeffrey Almgren has advanced post-secondary education training.

- 3) The Court reviewed the financial estimates presented by Eastern Washington University and finds that the reasonable costs of a year's worth of education for A.J.A. is \$15,000.

CP at 318. The trial court's order also gave Ms. Schneider the right to claim J.D.A. every year as a dependent exemption for tax purposes. And it required that Mr. Almgren pay .491 percent of extraordinary health care expenses.

Mr. Almgren unsuccessfully moved the court to reconsider its order and then appealed.

## DISCUSSION

### TRIAL COURT'S AUTHORITY TO AWARD POSTSECONDARY EDUCATIONAL SUPPORT

Mr. Almgren contends that the UIFSA did not give the trial court authority to order him to pay postsecondary educational support for his daughter. We review de novo the issue of a superior court's statutory authority. *Storedahl Props., LLC v. Clark County*, 143 Wn. App. 489, 496, 178 P.3d 377, review denied, 164 Wn.2d 1018 (2008).

The UIFSA governs a state's right to enforce or modify another state's child support order, including the right to alter the duration of the duty of support. RCW 26.21A.550(4) provides that the law of the state that issued the initial controlling order governs the duration of a child support obligation *in a proceeding to modify another state's child support order*:

In a proceeding to modify a child support order [of another state], the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state.

Here, a Nebraska court entered the initial controlling child support order in 1997. So Mr. Almgren asserts that Nebraska law controls the duration of his duty to pay child support and limits a Washington court's authority to extend that duty. He cites *Wills v. Wills*, a Nebraska case, for support. 16 Neb. App. 559, 745 N.W.2d 924 (2008).

In *Wills*, a Nebraska district court determined that the UIFSA authorized it to modify a New Mexico divorce decree by extending the duration of the father's child support obligation, measured by the age of majority, from age 18 (New Mexico) to age 19 (Nebraska). *Id.* at 559. The Nebraska appellate court concluded that the district court erred; it held that it could not extend the duration of the support obligation because, under the UIFSA, New Mexico law governed duration; and it modified the judgment. *Id.* at 565.

The case before us is not like *Wills*. The UIFSA does not apply here because the trial court did not modify a Nebraska order or any other foreign state's order. It modified its own 2007 child support order. And, in Washington, courts may order postsecondary educational support even though child support is originally set to end when the child reaches the age of majority. *In re Marriage of Gimlett*, 95 Wn.2d 699, 704, 629 P.2d 450 (1981); *In re Marriage of Kelly*, 85 Wn. App. 785, 790, 934 P.2d 1218 (1997); RCW 26.19.090(2). The trial court here, then, had authority to extend Mr. Almgren's child support duty by ordering that he pay postsecondary educational support.

The UIFSA would not have prohibited the trial court from extending Mr. Almgren's child support duty in any event. It would have prohibited the extension only if Mr. Almgren had already fulfilled the duty or if Nebraska law did not allow such an extension. RCW 26.21A.550(3), (4). But Mr. Almgren had not fulfilled his duty before it was extended, and Nebraska law permits the extension. Mr. Almgren's original child support obligation to his daughter was set to end when she reached the age of majority. In Nebraska, the age of majority is 19 and the obligation to pay child support ends when a child reaches age 19 unless a child support order extends the duty:

An obligor's duty to pay child support for a child terminates when (a) the child reaches nineteen years of age, (b) the child marries, (c) the child dies, or (d) the child is emancipated by a court of competent jurisdiction, unless the court order for child support specifically extends child support after such circumstances.

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Neb. Rev. Stat. § 42-371.01(1) (1997). Mr. Almgren was still obliged to pay child support for Amanda when the trial court entered the child support order of September 1, 2009, because Amanda was not yet 19. And the September 2009 order specifically extended Mr. Almgren's duty until Amanda's 23rd birthday. CP at 329 (Order of Child Support, Section 3.14). So, even assuming the UIFSA applied, the statute gave the trial court authority to extend Mr. Almgren's child support duty on September 1, 2009.

#### FINDINGS SUPPORTING POSTSECONDARY EDUCATIONAL SUPPORT AWARD

Mr. Almgren next contends that the record does not support some of the findings underlying the trial court's postsecondary educational support award. An award of postsecondary educational support must be based on one finding and several considerations about the child and the parents:

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.

RCW 26.19.090(2). Mr. Almgren contends that the record does not support the trial court's findings that his daughter is dependent and that the parties had predissolution

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expectations for her education. He also contends that the court did not consider the parties' levels of education, current and future resources, and ability to pay for college had they stayed together.

We will not disturb the trial court's award absent an abuse of discretion. *Lambert v. Lambert*, 66 Wn.2d 503, 508, 403 P.2d 664 (1965); *In re Marriage of Newell*, 117 Wn. App. 711, 718, 72 P.3d 1130 (2003). A court abuses its discretion by making a decision based on findings of fact that are not supported by the record or based on an incorrect standard or facts that do not meet the requirements of the correct standard. *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997); *Newell*, 117 Wn. App. at 718.

Dependent. A court cannot order postsecondary educational support unless a child is dependent and relying upon "the parents" for basic necessities. RCW 26.19.090(2). The trial court here found that "Amanda is in fact dependent and is relying upon the parents for the reasonable necessities of life." CP at 318. Mr. Almgren asserts that Amanda is not dependent on him because he has little contact with her. He asserts that Amanda is dependent on only Ms. Schneider for the necessities of life.

A "dependent" is "one who looks to another for support and maintenance, one who is in fact dependent, one who relies on another for the reasonable necessities of life." *Childers v. Childers*, 89 Wn.2d 592, 598, 575 P.2d 201 (1978). This record shows Mr.

Almgren has been supporting Amanda financially with monthly child support payments since she was six. CP at 187. And Amanda testified that she depends on Ms. Schneider and Mr. Almgren for the necessities of life. Report of Proceedings (RP) (Vol. B) at 50. The record, then, supports the court's finding that Amanda is dependent on *both* parents.

Expectations. Mr. Almgren next asserts that the record does not show he and Ms. Schneider had expectations for Amanda's postsecondary education while they were together. He is right. Ms. Schneider said she could not remember if she and Mr. Almgren ever talked about whether their children would go to college because they divorced when J.D.A. was three and Amanda was six. But the trial court did not find that the parties had expected that Amanda would attend college. Mr. Almgren, then, has failed to show the trial court based its decision on the parties' predissolution expectations. We, nevertheless, presume that the court considered the evidence of their lack of expectations before awarding postsecondary support. *Kelly*, 85 Wn. App. at 793.

Education, Resources, and Support. Mr. Almgren also argues that the trial court did not consider his education, standard of living, and current and future resources or the amount and type of support he and Ms. Schneider would have given Amanda had they stayed together. The trial court, in fact, considered all of these factors. It specifically found:

- "If the parents had not divorced they would have supported college course study." CP at 318;

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- “[B]oth parents have lost their jobs in the last month.” CP at 319;
- “[T]hey are likely to be readily employable despite the state of the economy” because they both have advanced education and training. CP at 319;
- “Jeffrey Almgren has advanced post-secondary education training.” CP at 318; and
- “The Court has chosen to use historical figures for 2008 and 2009, as shown on the Worksheets attached, for imputing income. The Court found this imputation necessary because while the economy is up and down [and] the parents may temporarily be out of work, the children continue to grow and have need for support, including college education.” CP at 319.

These findings show the trial court considered Mr. Almgren’s education, current and future resources, and support.

But Mr. Almgren takes issue with the court’s finding on imputed income. He contends that the trial court could not impute his income because he is not voluntarily unemployed. A trial court must impute income to a parent if it finds that parent voluntarily unemployed. RCW 26.19.071(6). It cannot impute the income of a parent who is unemployable or a parent who is unemployed or underemployed because of the parent’s efforts to comply with court-ordered reunification. *Id.* The trial court here found Mr. Almgren employable and did not find him voluntarily unemployed.

No provision in the child support schedule specifically authorizes or prohibits the imputation of income of a parent in Mr. Almgren’s situation. The child support schedule,

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including RCW 26.19.071(6), is “advisory and not mandatory for postsecondary educational support” in any event. RCW 26.19.090(1). RCW 26.19.090(2) merely requires that a court base its support award upon *consideration* of the parents’ “current and future resources” and other factors. And the trial court did that here. We, therefore, affirm the award of postsecondary educational support. *Lambert*, 66 Wn.2d at 508; *see State v. Gentry*, 125 Wn.2d 570, 635, 888 P.2d 1105 (1995) (“The question is not whether we, as a reviewing court, might disagree with the trial court’s findings, but whether those findings are fairly supported by the record.”).

#### CHILD SUPPORT OBLIGATION TO MINOR SON

Mr. Almgren next contends that the trial court abused its discretion by refusing to lower his child support obligation to his son. He argues that the record does not support the amount of gross income the court used to calculate his share of child support. He stresses again that the trial court could not impute his current income using past income figures because he is involuntarily unemployed. He also maintains that the court is statutorily prohibited from allocating more than 45 percent of his income to child support and that it failed to enter findings justifying its deviation upward from the standard calculation. Finally, he maintains that the record does not support the court’s finding that he will find a job within the next six months. The record does not support the finding, but that does not affect the outcome here.

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We will not disturb a trial court's decision to modify or adjust child support absent an abuse of discretion. *Newell*, 117 Wn. App. at 718. A trial court may adjust a child support order once every 24 months based upon changes in income. RCW 26.09.170(9)(a); *In re Marriage of Scanlon & Witrak*, 109 Wn. App. 167, 173, 34 P.3d 877 (2001). Any adjustment must be based on the child support schedule. RCW 26.19.035(1)(c). Any child support order must be supported by written findings of fact, including "reasons for any deviation." RCW 26.19.035(2). And no child support obligation may exceed 45 percent of a parent's net income absent good cause. RCW 26.19.065(1).

A court determines a parent's child support obligation by considering all his income and resources, including unemployment benefits. RCW 26.19.071(1), (3). A parent, then, must *disclose* all his income and resources. RCW 26.19.071(1). He must disclose his current pay stubs, his tax returns for the past two years, or other sufficient verification to verify his income and deductions. RCW 26.19.071(2).

Mr. Almgren's motion to adjust for change of income was based on unverified claims that he lost his job and collects unemployment benefits. Mr. Almgren said he could not disclose his employer's termination letter to verify that he lost his job or he would lose any potential termination benefits that his employer might give him. So the court invited Mr. Almgren to disclose his application for unemployment benefits to verify

that he lost his job. But Mr. Almgren did not disclose the application. He later testified that he was receiving unemployment benefits of \$441 per week and up to \$11,466 for the year:

Q. And are you receiving unemployment from the state of Minnesota?

A. Yes, I am.

Q. And what about are you receiving?

A. Ah, they awarded me \$441. And I – the taxes are taken out of that, so I receive \$375 a week.

Q. Did they also give you, ah, information as to what your yearly, ah, unemployment benefit is?

A. Ah, yes. They have that in the award letter. Yes.

Q. Okay.

And was that amount, ah, for, ah, the year beginning June 7, 2009, through June 5, 2010, \$11,466?

A. Yes, I believe that's correct.

RP (Vol. B) at 54-55. But Mr. Almgren also did not disclose the unemployment award letter or any other documentary evidence verifying his unemployment income. He disclosed only his pay stubs from December 2007 to February 2009 and his tax returns from 2007 and 2008 to verify his gross income. And that is all the court had to consider when calculating Mr. Almgren's child support obligation.

Those pay stubs and tax returns roughly support the gross income amount the court used to calculate Mr. Almgren's support obligation (\$3,826). Based on that gross income, the standard calculation for Mr. Almgren was \$823.90 per month. The court deviated downward, not upward, from the standard calculation and ordered that Mr.

**42-371.01. Duty to pay child support; termination, when; procedure; State Court Administrator; duties.**

(1) An obligor's duty to pay child support for a child terminates when (a) the child reaches nineteen years of age, (b) the child marries, (c) the child dies, or (d) the child is emancipated by a court of competent jurisdiction, unless the court order for child support specifically extends child support after such circumstances.

(2) The termination of child support does not relieve the obligor from the duty to pay any unpaid child support obligations owed or in arrears.

(3) The obligor may provide written application for termination of a child support order when the child being supported reaches nineteen years of age, marries, dies, or is otherwise emancipated. The application shall be filed with the clerk of the district court where child support was ordered. A certified copy of the birth certificate, marriage license, death certificate, or court order of emancipation or an abstract of marriage as defined in section 71-601.01 shall accompany the application for termination of the child support. The clerk of the district court shall send notice of the filing of the child support termination application to the last-known address of the obligee. The notice shall inform the obligee that if he or she does not file a written objection within thirty days after the date the notice was mailed, child support may be terminated without further notice. The court shall terminate child support if no written objection has been filed within thirty days after the date the clerk's notice to the obligee was mailed, the forms and procedures have been complied with, and the court believes that a hearing on the matter is not required.

(4) The State Court Administrator shall develop uniform procedures and forms to be used to terminate child support.

Source: Laws 1997, LB 58, § 1;Laws 2000, LB 972, § 16;Laws 2006, LB 1115, § 30.

## Annotations

- The enactment of this section in 1997 delineating the circumstances for terminating child support obligations is not tantamount to a material change in circumstances justifying modification of a child support award. *Reinsch v. Reinsch*, 259 Neb. 564, 611 N.W.2d 86 (2000).
- It is the public policy and statutory law of this state that child support obligations should be paid until the child reaches the age of 19. *Reinsch v. Reinsch*, 8 Neb. App. 852, 602 N.W.2d 261 (1999).

**APPENDIX 4**

§ 7-1062 by S.L. 2006, ch. 252, § 62. The 2006 amendment, by ch. 252, renumbered this section from § 7-1049; updated the first section reference, and inserted "7-1055 or 7-1057."

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

#### OFFICIAL COMMENT

An order registered for purposes of modification may be enforced in the same manner as an order registered for purposes of enforcement. But, the power of the forum tribunal to

modify a child-support order of another tribunal is limited by the specific factual preconditions set forth in Sections 611, 613, and 615 [§§ 7-1053, 7-1055, and 7-1057].

#### 7-1053. Modification of child support order of another state. —

(1) If section 7-1055, Idaho Code, does not apply, except as otherwise provided in section 7-1057, Idaho Code, upon petition a tribunal of this state may modify a child support order issued in another state which is registered in this state if, after notice and hearing, the tribunal finds that:

(a) The following requirements are met:

(i) Neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing state;

(ii) A petitioner who is a nonresident of this state seeks modification;

and

(iii) The respondent is subject to the personal jurisdiction of the tribunal of this state; or

(b) This state is the state of residence of the child, or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state, and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

(2) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(3) Except as otherwise provided in section 7-1057, Idaho Code, a tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state, including the duration of the obligation to support. If two (2) or more tribunals have issued child support orders for the same obligor and same child, the order that controls and must be so recognized under section 7-1011, Idaho Code, establishes the aspects of the support order which are nonmodifiable.

(4) In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state.

(5) On the issuance of an order by a tribunal of this state modifying a child support order issued in another state, the tribunal of this state becomes the tribunal having continuing, exclusive jurisdiction. [I.C., § 7-1045, as added by 1994, ch. 207, § 2, p. 639; am. and redesign. 1997, ch. 198, § 29, p. 556; am. and redesign. 2006, ch. 252, § 53, p. 764.]

**Compiler's Notes.** Former § 7-1053, enacted by Laws 1997, ch. 198, § 32, was redesignated as § 7-1056, pursuant to S.L. 2006, ch. 252, § 56.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1050 and rewrote

the section to the extent that a detailed comparison is impracticable.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

#### OFFICIAL COMMENT

Under the procedure established by RURESAs, after a support order was registered for the purpose of enforcement it was treated as if it had originally been issued by the registering tribunal. Most States interpreted these registration provisions as also authorizing prospective "modification" of the registered order. However, except in circumstances in which both States had the same version of RURESAs and the formalities were scrupulously followed, the registering tribunal did not have the legal authority to replace the original order with its own order. In short, most often the purported modification in essence established a new obligation. In sum, by its very terms RURESAs contemplated, or even encouraged, the existence of multiple support orders, none of which were directly related to any of the others. Although the issuing tribunal under RURESAs retained a version of continuing, exclusive jurisdiction to modify its own order, that power was not exclusive. The typical scenario of those days was that an obligee would seek assistance from a local court, which would determine a duty of support existed and forward a certificate and order and petition to a responding court. The subsequent proceeding in the responding State would bring the obligor before the court. The obligor typically sought modification of the support obligation (which almost always was not being paid) in a forum which presented him with the "hometown advantage." Thus arose the common practice of the issuance of a new, lower child-support order.

Under UIFSA, as long as the issuing State has continuing, exclusive jurisdiction over its child-support order, see Section 205(a) [§ 7-1009(1)], *supra*, a registering sister State is precluded from modifying that order. Without doubt, this is the most significant departure from the multiple-order system established by the prior Uniform Act. However, if the issuing State no longer has a sufficient interest in the modification of its order under the factual circumstances described in Section 205(b) [§ 7-1009(2)], *supra*, and restated in this section, after registration the responding State may assume the power to modify the controlling order.

Registration is subdivided into distinct categories: registration for enforcement, for modification, or both. UIFSA is based on recognizing

the truism that when an out-of-state support order is registered, the rights and duties of the parties affected have been previously litigated. Because the obligor already has had a day before an appropriate tribunal, an enforcement remedy may be summarily invoked. On the other hand, modification of an existing order presupposes a change in the rights or duties of the parties. The requirements for modification of a child-support order are much more explicit under UIFSA, which allows a tribunal to modify an existing child-support order of another State only if certain quite limited conditions are met. First, the tribunal must have all the prerequisites for the exercise of personal jurisdiction required for rendition of an original support order. Second, one of the restricted fact situations described in Subsection (a) [(1)] must be present. This section, which is a counterpart to Section 205(a) [§ 7-1009(1)], establishes the conditions under which the continuing, exclusive jurisdiction of the issuing tribunal is released.

Under Subsection (a)(1) [(1)(a)], before a tribunal in a new forum may modify the controlling order three specific criteria must be satisfied. First, the individual parties affected by the controlling order and the child must no longer reside in the issuing State. Second, the party seeking modification must register the order in a new forum, almost invariably the State of residence of the other party. A colloquial (but easily understood) description of this requirement is that the modification movant must "play an away game on the other party's home field." This rule applies to either obligor or obligee, depending on which of those parties seeks to modify. Proof of the fact that neither individual party nor the child continues to reside in the issuing State may be made directly in the registering State; no purpose would be served by requiring the petitioner to return to the original issuing State for a document to confirm the fact that none of the relevant persons still lives there. Third, the forum must have personal jurisdiction over the parties. This is supplied by the movant submitting to the personal jurisdiction of the forum by seeking affirmative relief, almost always coupled with the fact that the respondent resides in the forum. On rare occasion, the personal jurisdiction over the respondent may be supplied

by other factors, see Section 201 [§ 7-1005] and the comment thereto, *supra*.

The policies underlying the change affected by Subsection (a)(1) [(1)(a)] contemplate that the issuing State no longer has an interest in exercising its continuing, exclusive jurisdiction to modify its order. This restriction attempts to achieve a rough justice between the parties in the majority of cases by preventing a litigant from choosing to seek modification in a local tribunal to the marked disadvantage of the other party. For example, an obligor visiting the children at the residence of the obligee cannot be validly served with citation accompanied by a motion to modify the support order. Even though such personal service of the obligor in the obligee's home State is consistent with the jurisdictional requisites of *Burnham v. Superior Court*, 495 U.S. 604 (1990), the motion to modify does not fulfill the requirement of being brought by "a [petitioner] who is a nonresident of this State . . ." In short, the obligee is required to register the existing order and seek modification of that order in a State that has personal jurisdiction over the obligor other than the State of the obligee's residence. Again, almost invariably this will be the State of residence of the obligor. Similarly, fairness requires that an obligee seeking to modify or modify and enforce the existing order in the State of residence of the obligor will not be subject to a cross-motion to modify custody or visitation merely because the issuing State has lost its continuing, exclusive jurisdiction over the support order. The same is true of the obligor, who also is required to make a motion to modify support in a State other than that of his or her residence. Yet another benefit is supplied by the procedure mandated in this section. The most typical case is a motion to increase child support by the obligee, the enforcement of which ultimately will primarily, if not exclusively, take place in the obligor's State of residence. Modification and enforcement in the same forum promotes efficiency.

Several arguments sustain the jurisdictional choice made by UIFSA. First, "jurisdiction by ambush" will be avoided. That is, personal service on either the custodial or noncustodial party found within the state borders will not yield jurisdiction to modify. Thus, a parent seeking to exercise rights of visitation, delivering or picking up the child for such visitation, or engaging in unrelated business activity in the State, will not be involuntarily subjected to protracted litigation in an inconvenient forum. The rule avoids the possible chilling effect on the exercise of parental contact with the child that the possibility of such litigation might have. Second, almost all disputes about whether the tribunal has jurisdiction will be eliminated;

submission by the petitioner to the State of residence of the respondent alleviates this issue completely. Finally, because there is an existing order the primary focus will shift to enforcement, thereby curtailing to a degree unnecessary, time-consuming modification efforts. The array of enforcement procedures available administratively to support enforcement agencies may be invoked without resort to action by a tribunal, which had constituted a bottleneck under RURESA and URESA.

There are two exceptions to the rule of Subsection (a)(1) [(1)(a)] requiring the petitioner to be a nonresident of the forum in which modification is sought. First, under Subsection (a)(2) [(1)(b)] the parties may agree that a particular forum may serve to modify the order. Second, Section 613 [§ 7-1054], *infra*, applies if all parties have left the original issuing State and now reside in the same new forum State. Subsection (a)(2) [(1)(b)], which authorizes the parties to terminate the continuing, exclusive jurisdiction of the issuing State by agreement, is based on several implicit assumptions. First, the subsection applies even if the issuing tribunal has continuing, exclusive jurisdiction because one of the parties or the child continues to reside in that State. Subsection (a)(2) [(1)(b)] also is applicable if the individual parties and the child no longer reside in the issuing State, but agree to submit the modification issue to a tribunal in the petitioner's State of residence. Also implicit in a shift of jurisdiction over the child support order is that the agreed-upon tribunal must have subject matter jurisdiction and personal jurisdiction over at least one of the parties or the child, and that the other party submits to the personal jurisdiction of that forum. In short, UIFSA does not contemplate that absent parties can agree to confer jurisdiction on a tribunal without a nexus to the parties or the child. But if the other party agrees, either the obligor or the obligee may seek assertion of jurisdiction to modify by a tribunal of the State of residence of either party.

The requirements of Subsection (a) [(1)] are demonstrated to the tribunal being asked to assume continuing, exclusive jurisdiction. No action to transfer, surrender, or otherwise participate is required or anticipated by the original order-issuing tribunal. The Act does not grant discretion to refuse to yield jurisdiction to the issuing tribunal; nor does it extend discretion to refuse to accept jurisdiction to the assuming tribunal when the statutory requisites are met. However, there is a distinction between the processes involved under Subsections (a)(1) [(1)(a)] and (a)(2) [(1)(b)]. Once the requirements of (a)(1) [(1)(a)] or Section 613 [§ 7-1055] have been met for assumption of jurisdiction, the assuming jurisdiction acts on the modification and then

notifies the tribunal whose order has been replaced by the order of the assuming tribunal, see Section 614 [§ 7-1056], *infra*. In contrast, for a tribunal of another State to assume modification jurisdiction under Subsection (a)(2) [(1)(b)] it is necessary that the individual parties first agree in a record to submit modification of child support to that tribunal and file their agreement with the issuing tribunal. Thereafter, they may then proceed to petition the assuming tribunal to take jurisdiction.

Modification of child support under Subsections (a)(1) [(1)(a)] and (a)(2) [(1)(b)] is distinct from custody modification under the federal Parental Kidnapping Prevention Act, 42 U.S.C. Section 1738A, which provides that the court of continuing, exclusive jurisdiction may "decline jurisdiction." Similar provisions are found in the UCCJA, Section 14. In those statutes, the methodology for the declination of jurisdiction is not spelled out, but rather is left to the discretion of possibly competing courts for case-by-case determination. The privilege of declining jurisdiction, thereby creating the potential for a vacuum, is not authorized under UIFSA, see *Rosen v. Lantis*, 938 P.2d 729, 734 (N.M. App. 1997). Once a controlling initial child-support order is established under UIFSA, at all times thereafter there is an existing order in effect to be enforced. Even if the issuing tribunal no longer has continuing, exclusive jurisdiction, its order remains fully enforceable until a tribunal with modification jurisdiction issues a new order in conformance with this article [§§ 7-1043 to 7-1057].

The degree to which the new standards of one tribunal with continuing, exclusive jurisdiction has been accepted is illustrated by comparing UIFSA to the UNIFORM CHILD CUSTODY JURISDICTION ACT; Sections 12 — 14, and UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT Sections 201 — 202. The UCCJA provides general principles for the judicial determination of an appropriate fact situation for subsequent modification of an existing custody order by another court. In contrast, UIFSA establishes a set of "bright line" rules which must be met before a tribunal may modify an existing child-support order. The intent is to eliminate multiple support orders to the maximum extent possible consistent with the principle of continuing, exclusive jurisdiction that pervades the Act. The UCCJEA borrows heavily, but not identically, from UIFSA. Both UIFSA and UCCJEA seek a world in which there is but one-order-at-a-time for child support and custody and visitation. Both have similar restrictions on the ability of a tribunal to modify the existing order. The major difference between the two acts results from the fact that the basic jurisdictional nexus of each

is founded on different consideration. UIFSA has its focus on the personal jurisdiction necessary to bind the obligor to payment of a child-support order. UCCJEA places its focus on the factual circumstances of the child, primarily the "home State" of the child; personal jurisdiction over a parent in order to bind that parent to the custody decree is not required. An example of the disparate consequences of this difference is the fact that a return to the decree State does "not reestablish" continuing jurisdiction under the custody jurisdiction Act, see comment to UCCJEA Section 202. But, under UIFSA similar facts permit the issuing State to exercise continuing, exclusive jurisdiction to modify its child-support order if at the time the proceeding is filed the issuing State "is the residence" of one of the individual parties or the child, see Section 205(a) [§ 7-1009(1)], *supra*.

Subsection (b) [(2)] states that when the forum has assumed modification jurisdiction because the issuing State has lost continuing, exclusive jurisdiction, the proceedings will generally follow local law with regard to modification of child-support orders.

The 2001 amendment to Subsection (c) [(3)] and the addition of Subsection (d) [(4)] are designed to eliminate scattered attempts to subvert a significant policy decision made when UIFSA was first promulgated. Prior to 1993, American case law was thoroughly in chaos regarding modification of the duration of a child-support obligation when an obligor or obligee moved from one State to another with different ages regarding the duration of the child-support obligation. In those circumstances, whether the obligation ended, extended, or was curtailed was left almost to chance. In a RURESA proceeding, on the obligee's motion some States would increase the duration of the support obligation when the obligor resided in a State with a higher age for the child support obligation. Other States decreased the obligor's duration of child support when the obligor countered with a motion that the new RURESA support order should reflect a shorter duration of the obligation in accordance with local law. Multiple durations of the support obligation, as well as multiple support amounts, were both major problem areas addressed by UIFSA.

From its original promulgation UIFSA determined that the duration of child-support obligation should be fixed by the controlling order, see *Robdau v. Commonwealth, Virginia Dept. Social Serv.*, 543 S.E.2d 602 (Va. App. 2001). If the language was insufficiently specific before the 2001, the amendments should make this decision absolutely clear. The original time frame for support is not modifiable unless the law of the issuing State provides for modification of its duration. Some courts

have sought to subvert this policy by holding that completion of the obligation to support a child through age 18 established by the now-completed controlling order does not preclude the imposition of a new obligation thereafter to support the child through age 21 or even to age 23 if the child is enrolled in higher education. Subsection (d) [(4)] is designed to eliminate these attempts to create multiple, albeit successive, support obligations. Consistent with this principle, if a domestic violence protective order has been entered with a child-support provision that has a duration less than the general child support law of the State that issues the controlling order, the law of that State determines the maximum duration. In sum, absent tribunal error the first child-support order issued under UIFSA will invariably be the initial controlling order. The initial controlling order may be modified and replaced by a new controlling order in accordance with the terms of Sections 609 — 615 [ §§ 7-1051 to 7-1057 ], but the duration of the child-support obligation remains con-

stant, even though virtually every other aspect of the original order may be changed. This is also the standard in situations involving multiple valid child-support orders — a problem that will progressively decrease over time as RURESA multiple orders expire or a determination of the initial controlling order is made under Section 207 [ § 7-1011 ], *supra*. Once a controlling order is identified under these standards, the duration of the support obligation is fixed.

Relettered Subsection (e) [(5)] provides that upon modification the new order becomes the one order to be recognized by all UIFSA States, and the issuing tribunal acquires continuing, exclusive jurisdiction. Good practice mandates that the tribunal should explicitly state in its order that it is assuming responsibility for the controlling child-support order. Neither the parties nor other tribunals should be required to speculate about the effect of the action taken by the tribunal under this section.

**7-1054. Recognition of order modified in another state.** — If a child support order issued by a tribunal of this state is modified by a tribunal of another state which assumed jurisdiction pursuant to the uniform interstate family support act, a tribunal of this state:

- (1) May enforce its order that was modified only as to arrears and interest accruing before the modification;
- (2) May provide appropriate relief for violations of its order which occurred before the effective date of the modification; and
- (3) Shall recognize the modifying order of the other state, upon registration, for the purpose of enforcement. [I.C., § 7-1046, as added by 1994, ch. 207, § 2, p. 639; am. and redesign. 1997, ch. 198, § 30, p. 556; am. and redesign. 2006, ch. 252, § 54, p. 764.]

**Compiler's Notes.** Former § 7-1054, enacted as § 7-1047 by Laws 1994, ch. 207, § 2 and redesignated as § 7-1054 by Laws 1997, ch. 198, § 33, was redesignated as § 7-1058, pursuant to S.L. 2006, ch. 252, § 58.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1051; in the introductory paragraph, substituted "the uniform interstate family support act" for "this chapter or a law substantially similar to this

chapter and, upon request, except as otherwise provided in this chapter"; deleted former subsection (2), which read: "Enforce only nonmodifiable aspects of that order" and redesignated the following subsections accordingly; in present subsection (2), added "May"; and in present subsection (3), added "Shall."

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

#### OFFICIAL COMMENT

A key aspect of UIFSA is the deference to the controlling child-support order of a sister State demanded from a tribunal of the forum State. This applies not just to the original order, but also to a modified child-support order issued by a second State under the standards established by Sections 611, 613, and 615 [ §§ 7-1053, 7-1055, and 7-1057 ]. For

the Act to function properly, the original issuing State must recognize and accept the modified order as controlling and must regard its prior order as prospectively inoperative. Because the UIFSA system is based on an interlocking series of state laws, it is fundamental that a modifying tribunal of one State lacks the authority to direct the original issuing

**APPENDIX 5**

RCW 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 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. The court-ordered postsecondary educational support shall be automatically suspended during the period or periods the child fails to comply with these conditions.

(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.

1991 sp.s. c 28 § 7; 1990 1st ex.s. c 2 § 9.]

Notes:

**Severability -- Effective date -- Captions not law -- 1991 sp.s. c 28:** See notes following RCW 26.09.100.

**Effective dates -- Severability -- 1990 1st ex.s. c 2:** See notes following RCW 26.09.100.