

NO. 85112-3

SUPREME COURT
OF THE STATE OF WASHINGTON

In Re the Marriage of:

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

Respondent,

v.

JEFFREY JOSEPH ALMGREN,

Petitioner/Appellant.

SUPPLEMENTAL BRIEF OF PETITIONER, JEFFREY ALMGREN, IN
SUPPORT OF REVIEW

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JEFFREY ALMGREN

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STATUTES and RULES

Nebraska Revised Statute § 42-371.01(a) 1

Uniform Interstate Family Support Act. RCW 26.21 A.550(3)(4) 1

Nebraska Revised Statute § 42-351 (Reissue 1998) 2

IDENTITY OF PETITIONER

1. Jeffrey Almgren asks this Court to overturn the Court of Appeal, Division III, decision regarding the appeal from the Superior Court of Asotin County, State of Washington.

ISSUE 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. 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. The Court of Appeals decision is contrary to all decisions from the other states on this issue.

A. STATEMENT OF THE CASE

This brief is filed in support of Mr. Almgren's request of the Washington Supreme Court to overturn the Court of Appeals, Division III decision regarding Mr. Almgren being responsible for his adult daughter's post-secondary education support past the age of 19. The original divorce of the parties was issued from the State of Nebraska. In Nebraska, the age of majority was nineteen (19) at the time of the parties' divorce. In *Almgren*, the Nebraska decree noted support would end once the child was no longer a minor. See Nebraska Revised Statute § 42-371.01(a).

B. ARGUMENT

The Nebraska statutory scheme does not allow for child support to go beyond the age of majority, which is 19.

The State of Nebraska does not allow for child support to go beyond the age of majority as is noted in *Foster v. Foster*, 662 NW2d 191 (Neb 2003). In the *Foster* case the Supreme Court for Nebraska stated:

“It is clear that the marriage dissolution statutes do not empower district courts to order a parent to contribute to the support of children beyond their majority. See *Zetterman v. Zetterman*, 245 Neb. 255, 512 NW2d 622 (1994), *Kimbrough v. Kimbrough*, 228 Neb. 358, 422 NW2d 556 (Neb. 1988), *Meyers v. Meyers*, 222 Neb. 370, 383 NW2d 784 (1986) Neb. Rev. Stat. § 42-351 (Reissue 1998)”.

At p.p. 193, 194

There is no case law in the State of Nebraska that allows child support to go beyond the age of majority unless the parties somehow agree to that in some aspect of a settlement agreement. The Nebraska Court in *Foster* described that situation and cited to the *Zetterman* case regarding a property settlement agreement that allowed child support to go beyond the age of nineteen as long as the child was in college. In *Almgren*, the Divorce Decree was very specific that the child support would end at the age of majority. See C P at p.3.¹

¹ Child Support The Respondent shall pay as child support the sum of \$421.00 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 \$293.00.

Decisions from around the country support Mr. Almgren's position that the duration of child support remains unmodifiable no matter how many times the underlying amount of child support is modified in the new state. An example of this is *Hill v. Hill*, 777 NW 2d 252 (MINN. Ct. App. 2010). In the *Hill* case the parties were originally divorced in Mississippi where the age of majority was 21. Both parents later moved to Minnesota. In Minnesota, the age of majority was 20. The Minnesota court modified the amount of child support over a course of time but ultimately determined that the Uniform Interstate Family Support Act (UIFSA) would not allow Minnesota to change the age of majority from twenty-one to twenty. The Court in *Hill* looked at the provision of the UIFSA and the comments from the UIFSA and noted that a provision that was non-modifiable from the original order could not be modified in a second state.

The Court can also look at *Pierce v. Pierce*, 160 N.H. 354, 999 A.2d 299 (N.H. 2010) in which the New Hampshire Supreme Court found that a New Hampshire Court could not modify any aspect of a child support order that could not be modified under the law of the issuing state.

There is not one decision in the United States that supports the Court of Appeals, Division III decision in *Almgren*. The Court can also note the Washington State Uniform Legislation Commission and the provisions

regarding the UIFSA and the comments that are noted therein.²

The *Almgren* child support order which was modified in 2007 only provided the following:

“The right to petition for post-secondary support is reserved,.....”

C P at p.25

It is interesting to note that the Washington Legislature has drafted a bill regarding the UIFSA to make it crystal clear that the duration of the obligation of child support cannot be modified. See House Bill 1253 p. 25, provision regarding RCW 26.21A.550, Section 37(3). A copy of page 25 of said House Bill is attached for the Court’s ease of reference as Exhibit I.

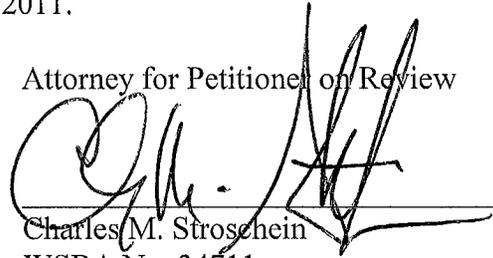
C. CONCLUSION

The Supreme Court of the State of Washington should overturn the Court of Appeals, Division III decision regarding post-high school child support. The State of Nebraska only allows child support to continue to age of nineteen (19). Judge Acey and his decision allows child support to continue for the course of the parties’ adult child’s college career. The decisions of the Superior Court Judge and the Court of Appeals are faulty. The Supreme court should enter an order remanding the matter back to the trial court instructing the trial court to terminate child support for Amanda Almgren on her nineteenth birthday, December 24, 2008.

² The duration of the child support obligation remains constant, even though virtually every other aspect of the original order may be changed.

DATED this 14 day of February, 2011.

Attorney for Petitioner on Review

A handwritten signature in black ink, appearing to read 'C. M. Stroschein', written over a horizontal line.

Charles M. Stroschein

WSBA No. 34711

D.

EXHIBIT I

1 manner as if the order had been issued by a tribunal of this state, but
2 the registered order may be modified only if the requirements of RCW
3 26.21A.550 or 26.21A.560 have been met.

4 **Sec. 37.** RCW 26.21A.550 and 2002 c 198 s 611 are each amended to
5 read as follows:

6 (1) If RCW 26.21A.560 does not apply, (~~except as otherwise~~
7 ~~provided in RCW 26.21A.570,~~) upon petition a tribunal of this state
8 may modify a child support order issued in another state which is
9 registered in this state if, after notice and hearing the tribunal
10 finds that:

11 (a) The following requirements are met:

12 (i) Neither the child, nor the obligee who is an individual,
13 (~~and~~) nor the obligor (~~do not~~) resides in the issuing state;

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

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

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

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

28 (3) (~~Except as otherwise provided in RCW 26.21A.570,~~) A tribunal
29 of this state may not modify any aspect of a child support order that
30 may not be modified under the law of the issuing state, including the
31 duration of the obligation of support. If two or more tribunals have
32 issued child support orders for the same obligor and same child, the
33 order that controls and must be so recognized under RCW 26.21A.130
34 establishes the aspects of the support order (~~that~~) which are
35 nonmodifiable.

36 (4) In a proceeding to modify a child support order, the law of the
37 state that is determined to have issued the initial controlling order