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SUPREME COURT  
STATE OF WASHINGTON  
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Clerk

63614-6

No. ~~81032-0~~

SUPREME COURT  
STATE OF WASHINGTON

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In re the Marriage of:

KRISTINE NELSON

Petitioner/Appellee,

v.

JAMES J. NELSON

Respondent/Appellant.

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*Respondent*  
RESPONSE BRIEF OF ~~Petitioner/Appellee~~, KRISTINE NELSON

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**A. ASSIGNMENTS OF ERROR**

Kristine Nelson, as Petitioner/Appellee submits that the court below did not error in its ruling and is not seeking review.

**B. STATEMENT OF THE CASE**

This matter was tried in King County Superior Court before the Honorable Douglass A. North and final orders including the Decree of Dissolution (CP 45-49), Findings of Fact and Conclusions of Law (CP 29-33), Final Parenting Plan (CP 33-44) and Order of Child Support (CP 18-28) were all signed and entered November 27, 2007.

At the trial below, the final orders indicate that the Respondent/Appellant was represented by J.Mills. (CP 23)The Petitioner/Appellee represented herself at the trial below (CP 23).

The Respondent/Appellant seeks direct review to this Court of the Order of Child Support denying the Respondent/Appellant's request for a downward deviation based on his residential time with the one child involved in this action. It appears that the final Order of Child Support was prepared and submitted by counsel for Respondent/Appellant (CP 23).

On this appeal the Statement of Arrangements states that only transcripts of the closing arguments and the oral decision by Judge North

were to be prepared. It is unclear if a transcript of the proceedings was prepared. The trial Court's oral comments are cited in Respondent/Appellant's brief, but it does not appear that the Respondent/Appellant requested a verbatim report of the proceedings from the trial. No transcript of the trial proceedings was provided to Petitioner/Appellee along with the Appellant's Opening Brief, other than what is quoted in the brief itself.

### **C. ARGUMENT**

#### **1. It Has Not Been Established That This Is A Matter For Direct Review by the Supreme Court.**

RAP 4.2(a) provides that a party may seek direct review in the Supreme Court only in certain types of cases. Appellant's Opening Brief states that this case seeks to clarify the process by which child support is calculated. (Appellant's Opening Brief, page 2). Of the six types of cases allowing direct review, only RAP 4.2(a)(3) and 4.2(a)(4) could conceivably apply to this case. RAP 4.2(a)(3) allows review for conflicting decisions. No such conflicting decisions are cited in Appellant's Opening Brief. RAP 4.2(a)(4) allows review for public issues. Appellant's Opening Brief does not state why this is a public issue.

Appellant argues that he seeks to clarify the process by which child support is calculated. The Respondent/Appellee submits that RCW 26.19 et. seq. more than adequately addresses how child support is calculated and this is not a “public issue” for which further review is warranted. The Respondent/Appellant had the opportunity file this matter in the proper Court of Appeals but elected not to do so. This appeal should be summarily denied.

**2. The Standard for Review is Abuse of Discretion**

Assuming this Court will proceed to review this matter, the standard of review for child support orders is abuse of discretion, meaning that a decision that is manifestly unreasonable or based on untenable grounds, including an erroneous view of the law. *McCausland v. McCausland*, 129 Wn. App. 390, 118 P.3d 944 (2005). A trial court will be found to have abused its discretion only where the decision is “manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971); *Barfield v. City of Seattle*, 100 Wn.2d 878, 676 P.2d 438 (1984). “It is very difficult to establish an abuse of discretion.” Washington Family Law Desk book, 2<sup>nd</sup> Edition, Section 65.4(2). Factual determinations will be affirmed if supported by substantial

evidence. *In re Marriage of Stern*, 68 Wn.App, 922, 846 P.2d 1387 (1993)(rejecting an argument that an appellate court should review factual issues on a de novo basis). A trial court's findings of fact will not be disturbed on appeal if they are supported by substantial evidence. *Thorndike v. Hesperian Orchards, Inc.* 54 Wn.2d 570, 343 P.2d 183 (1959). Substantial evidence exists if there is sufficient evidence in the record to persuade a fair-minded, rational person of the truth of the declared premise. *Steffen v. Department of Licensing*, 61 Wn.App. 839, 812 P.2d 516 (1991).

Mr. Nelson as Appellant does not appear to dispute that the proper standard of review is abuse of discretion and argues that on the facts of this case, there was not sufficient reason to set the child support transfer payment to the Mother in the amount of \$562.46 per month (CP 20). One defect in the Appellant's argument is that the record on appeal provides very little information as to what facts were presented at trial.

**3. The Respondent/Appellant's Decision Not To Provide A Complete Transcript of the Proceedings Precludes a Determination That There Was Not Adequate Factual Support For Denial of Mr. Nelson's Requested Deviation.**

Although quotes from Judge North's ruling are stated in Appellant's Opening Brief and Appellant's Statement of Arrangements indicates that a transcript of the closing arguments and oral decision are to be provided, no transcript of the trial and what testimony was or was not presented is before this court. Because of the Appellant's failure to provide a transcript of the proceeding below, this precludes this court's review of the record for substantial evidence supporting the findings and the trial court's factual findings must be viewed as verities on appeal. *Morris v. Woodside*, 101 Wn.2d 812, 815, 682 P.2d 905 (1984). In the case of setting forth specific reasons for deviation from a standard child support calculation, lack of specific findings is not fatal, and in absence of findings on a particular issue, the appellate court may look to oral opinion to determine the trial court's basis. *Matter of Marriage of Crosetto* 82 Wn.App. 545, 918 P.2d 594 (1996). Again, without reference to what was deficient in the factual findings at trial, Appellant's argument fails.

**4. Denial of the Request for Deviation Is in the Trial Court's Discretion and Should Not be Disturbed on Appeal.**

Appellant claims that the trial court improperly denied his request to reduce his monthly child support obligation on the grounds that he

spends a significant amount of time with the child. Residential credits are discretionary and the court shall consider the evidence of the increased costs to the obligor and decreased costs to the recipient (arguably implying that it is the obligor's burden to present such evidence). *State on behalf of Sigler v. Sigler*, 85 Wn.App. 329, 338, 932 P.2d 710 (1997)<sup>1</sup>. Granting or denying a deviation from the standard child support calculation is within the trial court's discretion and generally, trial courts are not reversed on such decisions. *Goodell v. Goodell*, 130 Wn.App. 381, 122 P.2d 929 (2005). *See also, In the Matter of the Marriage of Arvey*, 77 Wn.App. 817, 819 n. 1, 894 P.2d 1346 (1995) (appellate court will generally decline to consider assignments of error unsupported by citation to authority or meaningful legal analysis).

The Appellee submits that denial of the deviation was within the judgment of the trial court and that decision should not be disturbed on appeal.

#### **D. REQUEST FOR ATTORNEY'S FEES AND COSTS**

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<sup>1</sup> Interestingly enough, the *Sigler* decision involved a case where the father has the child 40.5 % of the time, roughly the equivalent of Appellant's time with his child, but held that the evidence did not support a deviation from the standard child support calculation absent findings on how much the father spent on the child when the child was in his care that would justify the reductions.

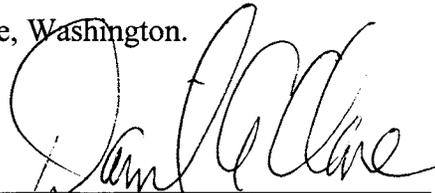
Ms. Nelson as Petitioner/Appellee, requests an award of all attorney's fees and costs incurred with this appeal under RCW 26.09.140 and RAP 18.1.

**E. CONCLUSION**

It is requested that this appeal be denied and the decision of the court below be affirmed. It is further requested that the Petitioner/Appellee be awarded all attorney's fees and costs incurred in association with this appeal.

Respectfully Submitted,

DATED: April 1, 2009 at Seattle, Washington.

A handwritten signature in black ink, appearing to read "Daniel A. Clare", written over a horizontal line.

Daniel A. Clare, WSBA #31328