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No. 69430-8-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

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COURT OF APPEALS DIV 1
STATE OF WASHINGTON

In re the Marriage of

KELLY REYES f/k/a KELLY S. MORRIS
Respondent

and

GREGORY CHARLES MORRIS
Appellant

ON REVIEW FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

REPLY BRIEF OF APPELLANT

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I. STATEMENT OF ISSUES IN REPLY

1. The child support statute requires the issue of post-secondary child support be decided by a full adjudication of the statutorily prescribed issues.

2. If post-secondary child support is not ordered in the original order of child support, it can only be ordered by agreement of the parties or by modification, upon proof of a substantial change of circumstances and after consideration of the relevant factors.

3. The statute controls over the mandatory forms.

4. The father here cannot afford to pay post-secondary educational support for two adult daughters while he is supporting another family, which includes a small child.

5. The trial court's errors are not harmless and the harmless error doctrine in this context effectively nullifies the statute and relieves the trial court of its responsibilities, substituting this Court in its place.

6. The appellant did not "invite" the trial court to make the errors made here.

7. The mother can afford attorney fees and the father cannot.

II. ARGUMENT IN REPLY

A. THE COURT'S AUTHORITY TO ORDER POST-SECONDARY CHILD SUPPORT IS CONTROLLED BY STATUTE.

This case is not about the virtues of a college education or about the desirability of college students receiving financial assistance from their parents. It is not about the father's love for his daughters or even about his desire to provide financial assistance to them. It is about his ability to do so and it is about the legal requirements for imposing that obligation on him or on any parent.

Respondent argues there is no authority requiring her to seek postsecondary education support by modification, as opposed to adjustment. Br. Respondent, at 13. In fact, there is, and that authority has to do with finality.

1) Child support orders are final and subject to rules governing finality.

As a general rule, orders cannot be changed. They are final. A trial court may reopen a final judgment only when a statute or court rule specifically authorizes it to do so and, then, may act only within the constraints of that authority. *In re Marriage of Shoemaker*, 128 Wn.2d 116, 120, 904 P.2d 1150 (1995). Indeed, the interests in finality of judgments are particularly acute in family

law proceedings. *In re Marriage of Landry*, 103 Wn.2d 807, 809-810, 699 P.2d 214 (1985).

At the same time, in family law, there can arise a need to re-open a judgment. For this reason, statute specifically authorizes modification of parenting plans and maintenance or, with respect to child support, modification and adjustment. RCW 26.09.170. Apart from CR 60 (not at issue here), these are the only mechanisms by which an order of child support may be changed. *In re Marriage of Shoemaker, supra*. Thus, the authority to alter an order of child support resides in the specific provisions of the statute.

2) Statute authorizes an order for postsecondary education support as a modification, not an adjustment.

The tension between these two principles, finality and the potential need to modify, is resolved by requiring a petitioner seeking modification to show a substantial change of circumstances. RCW 26.09.170, RCW 26.09.260; see *In re Marriage of Shellenberger*, 80 Wn. App. 71, 79-80, 906 P.2d 968 (1995) (“With some statutory exceptions not argued here, the support provisions in a dissolution decree are modifiable only on a showing of an unanticipated, substantial change in circumstances.”). In certain limited circumstances, the statute permits an adjustment or modification of child support without

showing a substantial change of circumstances. RCW 26.09.170(6) & (7). None of these “adjustment” provisions apply to postsecondary education support, as a plain reading of the statute makes obvious. (Put another way, postsecondary education support is not included in the provisions permitting “adjustment.”)

Simply, the statute does not authorize a court to order postsecondary education support by the adjustment mechanism. In other words, the statute does not authorize a court to order postsecondary education support without a showing of a substantial change of circumstances. Without the statute’s authority, the court may not order postsecondary child support. *In re Marriage of Schneider*, 173 Wn.2d 353, 370, 268 P.3d 215 (2011).

In short, when the mother argues there is no authority for the proposition that postsecondary support must be ordered by means of modification, rather than adjustment, she has it backwards. There is no authority for the court to do it any other way than by means of modification.

B. THE PARTIES NEVER AGREED TO OR ADJUDICATED THE ISSUE OF POSTSECONDARY CHILD SUPPORT

The mother also seems to argue two other things: that the parties already decided postsecondary child support (and that is what is meant by “reserved” in the 2008 Order of Child Support) or

that the matter of postsecondary child support is more like adjusting support levels according to income or age changes, i.e., not a substantial change or addition to an existing order of support. Both these arguments are plainly wrong.

To the extent the mother argues there was a prior adjudication or agreement on the issue of postsecondary child support, which the word “reserved” in the 2008 order somehow signifies, her argument finds no support in the record, in Washington law, or in a plain reading of the text.

For example, the mother claims “the parties contemplated” their daughters would attend college with the parents’ financial support. Br. Respondent, at 11-12. However, she does not support this claim with any citation to the record. Certainly, the record is devoid of any conclusions the parties reached following this contemplation. Rather, whatever they may have been thinking, it is clear the parties postponed any determination, both at the time of the original order of child support and in subsequent modifications, including the one in 2008 when the parties expressly “reserved” the issue. CP 39. This makes sense, since the daughters were still young (13 and 15) and the father at that time had a new child, not even two years old, with the attendant

expense, rendering it improbable he would commit to a postsecondary child support obligation for his two daughters, particularly an open-ended obligation.

In any case, there simply is nothing to indicate that an adjudication or agreement on this issue happened in 2008 or ever. Indeed, quite the opposite is made clear by the order, which declares support will terminate when the children reach age 18 or graduate from high school. CP 39. Why would the order say this if the parties had decided otherwise? Further, the order declares that “[t]he right to petition for postsecondary education support is reserved.” CP 39. The plain and ordinary meaning of “reserve” is “to retain or hold over to a future time or place : defer.” *Webster’s Third New International Dictionary* (2002). That is what happened here. The parties deferred the issue, subject to a parent exercising the “right to petition” for such support.

No Washington case could be found that directly addresses the meaning of “reserved” in this context, perhaps because it is too obvious. Certainly, where the same language as used in the order here is found in other cases, those cases involved petitions to modify, not adjustment proceedings. See, e.g., *Schneider*, 173 Wn.2d at 357 (¶ 4) (“reserving the right to request” postsecondary

child support); *In re Marriage of Sagner*, 159 Wn. App. 741, 744 (¶ 2), 247 P.3d 444 (2011) (“the right to petition... is reserved”); *In re Marriage of Newell*, 117 Wn. App. 711, 714, 72 P.3d 1130 (2003) (“the right to petition is reserved”). No case could be found, and the mother cites to none, where postsecondary child support was “reserved” and then resolved by an adjustment proceeding. See Br. Respondent, at 15-16. That is because modification is the proper procedure.

Nor is “reserved” ambiguous, as happens in some cases where, for example, the order provides support “until the[children] are no longer in need of support” or until they are “no longer dependent.” See, e.g., *In re Marriage of Balch*, 75 Wn. App. 776, 780, 880 P.2d 78 (1995). Though imprecise, these formulations at least express “an intention” to continue child support until its termination is triggered by the children’s independence. *Id.* By contrast, “reserved” expresses an intention to decide nothing.

In a similar vein, the mother seems to argue that in 2008 the parties merely reserved *how much* post secondary child support they would contribute. Br. Respondent, at 12-13 (regarding the possibility the parents’ incomes might change). That is, she argues that after 2008 an order for postsecondary support simply

“conformed’ the provisions of the 2008 order” to the parties’ and children’s current circumstances. Br. Respondent, at 11. Thus, she concludes, an adjustment procedure was appropriate.

As a starting point, it bears noting that the 2008 order does not say anything suggestive of this meaning. It says the “right to petition” for postsecondary support is reserved, which is a lot different than a right to calculate the bill.

In any case, the issue here is the duration of child support, i.e., whether support should extend past a child’s majority. *In re Marriage of Schneider*, 173 Wn.2d at 370 (postsecondary support is a question of duration). This is not like a change in the parents’ income or the economic tables, or even like a change in the child’s age qualifying the child for increased support under the economic table. RCW 26.09.170(6) and (7). These are the purview of adjustments. Everything else falls within the purview of the modification provisions, meaning all other “substantial changes and/or additions to the original order of support” must be accomplished by modification. *In re Marriage of Scanlon*, 109 Wn. App. 167, 173, 34 P.3d 877 (2001) (distinguishing modifications from adjustments); *see, also, Rivard v. Rivard*, 75 Wn.2d 415, 418, 451 P.2d 677 (1969) (“A modification ... occurs when a party’s

rights are either extended beyond or reduced from those originally intended in the decree.”). Extending the duration of child support past its termination is a substantial change and must be accomplished by modification.

Finally, the mother looks for support in the mandatory child support forms. Br. Respondent, at 14-15. She makes a reasonable case that the forms may not accurately implement the statute. However, she cites no authority for the proposition that these forms, created by a court committee, trump the statute. Rather, it is clear “[t]he law must drive the forms, not vice versa.” *In re Marriage of Allen*, 78 Wn. App. 672, 679, 898 P.2d 1390 (1995).

Here, the parties neither adjudicated nor agreed to a post-secondary child support obligation for their children. Rather, in 2008, the parties “reserved” only “the right to petition” for such support. The mother never exercised that right.

C. THE REQUIREMENT FOR MODIFICATION COMPORTS WITH WASHINGTON POLICY ON POSTSECONDARY CHILD SUPPORT.

The mother complains about the “procedural hurdles of a full modification.” Br. Respondent, at 13. At least she acknowledges that something in this proceeding was lacking. Still, she must take her complaint about this burden to the legislature. In matters of

child support, the court's "responsibility under the Washington Constitution is to interpret and apply the decision of the legislature." *Marriage of Schneider*, 173 Wn.2d at 370. The legislature has decided the modification proceeding is necessary.

Moreover, the requirement for modification is only sensible, given the broader context. Obviously, parents who remain married cannot be obligated to pay for their children's college expenses. Increasingly, given the dramatic rise in educational cost and the stagnation of income for most families, many of these parents simply cannot help, at least, they cannot pay the full load as the court ordered here. CP 205-206. Thus, the economic reality has upended the rationale for treating divorced parents differently in this regard, which was based on an assumption that married parents would pay. *See Childers v. Childers*, 89 Wn.2d 592, 601, 575 P.2d 201 (1978). While this differential treatment was upheld over 30 years ago, it remains true -- or more true -- that when the state imposes this obligation on parents who divorce, it must tread carefully. *Id.* (imposing an "absolute duty" on divorced parents might "be an unreasonable classification" under the constitution)¹.

¹ Many states do not even permit support past majority. *See, e.g., Marriage of Schneider, supra* (Nebraska does not allow a court to order postsecondary

Because post-secondary child support is not a mandatory obligation, whether to order it is a matter decided according to a different set of requirements than applies to child support for minors. *Compare* RCW 26.19.020 and RCW 26.19.090. The statute requires a full adjudication of numerous facts, including facts related to a child's aptitude for college, the parents' educational background, and the parents' ability to pay for college. RCW 26.19.090. Moreover, if not originally ordered, the court has no authority to modify the decree absent a "substantial change in circumstances." By this means, the legislature limits the court's authority to "compelling situations." *Gimlett v. Gimlett*, 95 Wn.2d 699, 704, 629 P.2d 450 (1981); *accord Kelly v. Hannan*, 85 Wn. App. 785, 790, 934 P.2d 1218 (1997) ("compelling circumstances").

Here, the court made none of these necessary findings. CP 198-199. Indeed, the court never conducted the requisite inquiry. Rather, the judge seemed to presume the opposite of what Washington law presumes, i.e., the court presumed the parents would be obligated for postsecondary education support. The court wondered aloud whether "there's something else that the Court

educational support for an adult child); *H.P.A. v. S.C.A.*, 704 P.2d 205, 209-10 (Alaska 1985) (statute limits education support to 18 year olds).

needs to consider ... as opposed to making a determination that [support] is appropriate.” RP 22. Yes, in fact, the court needed to consider the statute’s requirements.

The court also seemed to think the distinction between a modification and adjustment proceeding was a mere technicality. See, e.g., RP 21 (counsel was “over-thinking” the distinction). In fact, there are numerous, substantive differences between the two proceedings. The usual rules for child support simply do not apply. For example, the child support schedule is advisory, not mandatory. *Marriage of Newell*, 117 Wn. App. at 720. Moreover, the proportion of support each parent pays may vary from what the schedule would normally require, and the court may even impose an obligation on one parent and not the other. RCW 26.19.090(6). Unlike with child support usually, the court’s discretion includes “whether, for how long, and how to apportion postsecondary educational expenses.” *Newell*, 117 Wn. App. at 720. As discussed further below, the court’s failure to understand the applicable law led it to make numerous errors, including framing the problem as one involving the court’s jurisdiction. See Br. Appellant, at 7-10.

The mother also argues legislative intent supports her

argument. Br. Respondent, at 13-14. It does not. First, the overarching legislative intent in the area of child support is twofold: to provide for the children and to do so fairly, commensurate with the parents' financial abilities. RCW 26.19.001.² Second, in respect of post-majority support, the legislative intent is clear: child support presumptively terminates when the child reaches the age of majority. Any additional obligation is not mandatory; it is not presumptive; it may be ordered only upon compliance with the statute. There is no question the legislature intended parents receive the procedural safeguards of modification before being obligated to pay child support past the age of majority.

D. THE FATHER WAS HARMED, THOUGH A SHOWING OF HARM IS NOT NECESSARY.

Finally, the mother argues the trial court's error was harmless. Br. Respondent, at 16-17. The father does not agree, as a factual matter, which he discusses further below. As a procedural matter, the "harmless error" argument completely

² The statute provides:

The legislature intends, in establishing a child support schedule, to insure that child support orders are adequate to meet a child's basic needs and to provide additional child support commensurate with the parents' income, resources, and standard of living. The legislature also intends that the child support obligation should be equitably apportioned between the parents.

undermines the legislative scheme. Presumptively, a parent is not obligated to support a child after that child reaches the age of majority, as discussed above. The legislature has commanded the court to conduct a specific analysis before the court may order post-majority support. RCW 26.19.090(2) (“shall determine” and “shall exercise discretion ... based upon consideration of factors ...”); see *Erection Co. v. Dep’t of Labor & Indus.*, 121 Wn.2d 513, 518, 852 P.2d 288 (1993) (“shall” is a mandatory directive). If a trial court may ignore this directive, and a parent claiming a right to the statutorily prescribed procedure must show she or he is harmed as a consequence, then there is really no point to having the statute. Basically, the presumption flips.

This problem is related to the lack of findings, here and generally. Application of the harmless error doctrine here not only allows the trial court to bypass the statute’s requirements, it requires this Court to engage in the fact-finding the trial court evaded. Here, the trial court entered cursory findings. CP 198-199. Such findings do not allow proper review, as our Supreme Court emphatically held in *In re Marriage of McCausland*, 159 Wn.2d 607, 620, 152 P.3d 1013 (2007). There, with respect to another structured exercise of the court’s discretion, the Supreme

Court held, even where cursory findings and the trial record “might appear to justify” the court’s action, “only the entry of written findings of fact demonstrate that the trial court *properly exercised its discretion* in making the award.” *Id.* This same logic applies here on principle.

But more is at stake, here and generally. Compliance with the requirement for findings helps the trial court properly perform the task it faces and helps this Court know whether it did. Here, the trial court did not do its job correctly, in numerous ways.

For example, the trial court seemed to assume Washington law accepts as a given that parents must make “a major financial sacrifice” to send their children to college. RP 25. Actually, Washington law is solicitous of a parent’s sacrifice in this context. RCW 26.19.090(2); *Marriage of Shellenberger*, 80 Wn. App. at 84. Not only does the statute not require this sacrifice of all parents; it requires the sacrifice be ordered for divorced parents only where it “works the parent no significant hardship.” *Childers*, 89 Wn.2d at 601.

The court also flatly misunderstood some crucial distinctions between postsecondary support and mandatory child support. The court thought the only permissible “cap” on the parents’ obligation is

the in-state state school cost. RP 27-29. The court also thought it had to obligate both parents, and obligate them in the proportions derived from the advisory child support schedule. RP 27 (“it’s a goose and gander kind of thing”). The court did not address the fact that the father did not have a college education, though the statute requires it. RCW 26.19.090(2). And, throughout, the court seemed simply confused about when the father could seek modification. RP 24-29. In short, the court may have read a portion of the statute into the record (RP 27), but the court repeatedly failed to comply with it.

The fact that mother noted her motion six weeks before the hearing, or the fact that the court offered a continuance, does not mitigate these problems. See, Br. Respondent, at 5. The court still failed to apply the correct legal standard of a substantial change of circumstances and to analyze the statutory factors. These are not harmless errors.

E. THE FATHER DOES NOT HAVE THE ABILITY TO FUND COLLEGE EDUCATION FOR HIS DAUGHTERS AT THE LEVEL ORDERED BY THE COURT.

This failure is very consequential to the father. He is 39 years old. He is the primary provider for his second family, which includes a young child. He has no assets to speak of, not even life

insurance. He does not even have an emergency fund. He has a lot of consumer debt. He would like to help his daughters go to college, but reality constrains his ability to do so. He is compelled to obey the laws of arithmetic, unlike the mother in her brief, where she declares he will have \$2440 in discretionary funds at the end of every month. Br. Respondent, at 22. In fact, when the court ordered the father to pay 30% of his net monthly income for his daughters' college education, the court put his family, which includes the minor child, in financial peril.

The worksheets show the father's monthly net income to be \$7,668, or \$92,016 annually. CP 120.³ Both daughters will attend the University of Washington, which estimates the annual cost of their education to be \$27,587 each, or \$55,174 total.⁴ This means the father is obligated to pay \$25,380 annually (46% of the total), which is 28% of his net income. That is, every month, he is supposed to come up with \$2,297 in child support. He simply does not have this money. His basic monthly expenses are \$6577, which leaves \$1,091 net at the end of the month. His wife, working

³ This is within \$10 of the amount stated on the father's financial declaration. CP 84. When the mother discusses the father's income, she includes the income of his present wife. Br. Respondent, at 22

⁴ <https://admit.washington.edu/Paying/Cost#freshmen-transfer>.

part-time, earns approximately \$850 a month. Even if they pay all this supposed surplus toward the daughters' college, the father is still \$356 short every month, meaning the family has to borrow to meet their basic necessities. This is precisely what happened in *Shellenberger*. 80 Wn. App. at 83.

To conclude otherwise, the mother engages in some fantasy arithmetic. Br. Respondent, at 22. She fails to subtract for the father's debt service (\$509), which are minimum payments only to begin with, but, presumably ones he cannot evade short of declaring bankruptcy. See, also, CP 346 (paystub showing automatic deduction for loan). This Court has observed that debt service must be included in the monthly expense calculation. *Shellenberger*, 80 Wn. App. at 84. And the mother includes the \$850 of the wife's income, which the court may not use in the child support calculation. CP 86; RCW 26.19.071(4)(a).

Thus, rather than leaving this family with \$600 in surplus every month, as the mother claims, the court's order actually leaves this family living hand to mouth. Even including in the calculation the wife's \$850 income, the postsecondary support obligation forces the father's family to borrow each month to make ends meet.

Nor does the family's budget permit reallocation to

compensate for this huge expense. It includes no luxury items, unless, like the mother, you count preschool costs as a luxury. See Br. Respondent, at 6, where she complains that the father is “paying tuition” for his son “to attend private Montessori school.”⁵ See *Shellenberger*, 80 Wn. App. 84 n. 10 (needs of minor child outweigh needs of adult child). It allows for no retirement savings, except for his employer’s mandatory 401k program. CP 346. What savings the family has (less than \$3,000) are inadequate for almost any emergency, dramatically so for something like a job loss or serious medical problem. CP 86. One broken transmission and this family falls deeper into debt. The father is not living in poverty, obviously, but, his family of three is not living with economic security either. This is why the court has deviated downward for basic child support since 2008, including in 2012. Nothing about the father’s circumstances has improved. In fact, his income has gone down. CP 59.

⁵ This preschool expense allows the wife to work part-time. CP 59. The mother also offers advice on how the father might “tighten his belt,” such as eliminating tournament expense (a requirement of his job as a golf pro). Br. Respondent, at 24, n.7. This is pretty silly. The mother enjoys a much higher standard of living, for example, spending almost three times as much on housing (and owns her own home, instead of renting, as does the father). CP 22, 86. She spends \$50 a month on movies and another \$300 on cable and another \$100 on entertainment. CP 24, 25. She budgets \$150 a month for vacation. CP 25. It is at least presumptuous to tell the father to tighten his belt while she enjoys these actual luxuries.

Here, of course, the court never made a finding the father could afford this expense. And how could it? The money just is not there. Even without the fatal procedural defect in this case, the court's order would constitute an abuse of discretion under Washington law. The court cannot bankrupt this family, or push them further into debt, in order to fund the daughters' college education.

F. THE FATHER DID NOT INVITE THE ERROR.

The mother wants the father to take the blame for her and trial court's errors. See Br. Respondent, at 19-20. She claims the father cannot complain of the trial court's errors unless he made every effort to correct them. *Id.* This is a strange argument for the mother to make, since she made the mistake of filing an adjustment motion rather than a petition to modify, and urged the court to ignore what the statute mandates. Moreover, her invited error argument ignores that the father actually did argue to the court that the modification procedure was necessary, as a matter of form and substance, specifically including the requirement to prove a substantial change in circumstances. RP 11-12, 13, 18-19, 20. The father did his part to guide the trial court toward a correct application of statute.

G. THE COURT CANNOT EXTEND THE TIME FOR FILING A PETITION TO MODIFY.

Finally, the mother asks this Court to remedy her error by permitting her to seek modification now, even though the time for doing so under the statute and the applicable child support order has elapsed. Br. Respondent, at 24-25. Here, again, statute governs, and it provides that support terminates upon emancipation “[u]nless otherwise agreed in writing or expressly provided in the decree.” RCW 26.09.170(3). As this Court has previously recognized, once support has terminated, the court lacks authority to modify the support order. *In re Marriage of Studebaker*, 36 Wn. App. 815, 816-17, 677 P.2d 789 (1984).

This situation is not like the one cited by the mother, for several reasons. Br. Respondent, at 25, citing *In re Custody of E.A.T.W.*, 168 Wn.2d 335, 349, 227 P.3d 1284 (2010). First, the mother misreads or misstates the court’s order in *E.A.T.W.*, which essentially punted the question of whether the grandparents could renew their petition for custody. 168 Wn.2d at 349, ¶ 28. The mother cites to the portion addressing remand to the trial court to review the original petition under the correct legal standard. In the next paragraph, the Supreme Court expressly did not decide

whether the grandparents could amend their petition, but left that issue to the trial court to decide. *Id.* In short, contrary to the mother's brief, the Supreme Court in *E.A.T.W.* did not do what she asks this Court to do here.

In any case, *E.A.T.W.* is inapposite because the case did not involve the trial court's authority to allow an amended petition for custody. There was no statute constraining the court's authority. Here, by contrast, the statute deprives the trial court of authority to modify child support once it has terminated. The trial court simply lacks the authority to allow the mother to file a petition to modify child support. This is a big difference from *E.A.T.W.* See, *Schneider, supra.*

Finally, the mother urges this Court to ignore this constraint to protect "the rights of children." Br. Respondent, at 25. But all children do not have a "right" to child support after they have reached adulthood. *Childers*, 89 Wn.2d at 600-601. And a parent's duty to provide that kind of support depends on the parent's ability to provide it and on compliance with the statute. Neither condition is satisfied here.

H. THE FATHER SHOULD RECEIVE HIS FEES.

For these same reasons, the father should receive his fees

on appeal. Mother has unnecessarily impugned the father for bringing this appeal. See, e.g., Br. Respondent, at 22. In fact, the father would not “rather litigate,” as she claims; rather, he has been compelled to litigate by circumstances, including the mother’s failure to use the statutorily mandated procedure and the court’s failure to understand and apply the law, as well as the simple fact he cannot afford to pay nearly 30% of his income for the next four years to put his daughters through college (or more, if tuition rises, as predicted). It is not “senseless” (Br. Respondent, at 26) to ask that the law be upheld. And it makes perfect sense to enforce that law in a way that does not bankrupt the father or force him to take on more and more debt just to meet his family’s basic needs. Forcing his new family to live on the edge is too high a price for the daughters’ college education.

Ironically, the mother makes the same kind of argument, i.e., making a priority of her young children, when she opposes an award of fees. Br. Respondent, at 26. She hopes to spend less time working and more time with her newborn children, thus reducing her income. *Id.* Five pages earlier, she reams the father for being the kind of “divorced parent” who, if not obligated to pay for college education, “will find other things on which to spend his or

her money.” Br. Respondent, at 21. Right, other things like other children, minor children, whose support the parent is obligated to provide. See *In re Marriage of Pollard*, 99 Wn. App. 48, 991 P.2d 1201 (2000) (court must impute income to parent though her purpose for working part-time was to care for her children).

The mother has treated the father in these proceedings unfairly. Since, as a young parent, divorced at 21, he has unfailingly met his obligations, through child support and insurance coverage, as well as by loving his daughters. He remains willing to help his daughters in their pursuit of a college degree, but only to the extent he can without jeopardizing his ability to meet the basic needs of his family. He has so little financial security already; he should not be made to live with outright financial peril.

III. CONCLUSION

For the reasons stated above and in Appellant’s Opening Brief, Greg Morris asks the trial court’s order of child support be vacated and that he be awarded fees on appeal.

Dated this 3rd day of June 2013.

RESPECTFULLY SUBMITTED,



PATRICIA NOVOTNY #13604
Attorney for Appellant

Rev. Code Wash. (ARCW) § 26.19.090

Statutes current through 2013 legislation effective as of April 17, 2013.

Annotated Revised Code of Washington > TITLE 26. > CHAPTER 26.19.

§ 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.

History

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

Annotations

Notes

SEVERABILITY -- EFFECTIVE DATE -- CAPTIONS NOT LAW -- 1991 SP.S. C 28: See