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No. 73194-7-1

COURT OF APPEALS  
DIVISION I  
OF THE STATE OF WASHINGTON

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HEIDI MARIE WELBORN,  
Petitioner

v.

JOSHUA CONRAD WELBORN,  
Respondent

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BRIEF OF APPELLANT

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2016 SEP 13 10:09 AM  
COURT OF APPEALS  
DIVISION I  
STATE OF WASHINGTON

Presented by:  
Joshua Conrad Welborn  
408 15<sup>th</sup> Avenue  
Kirkland, WA 98033  
(206)229-1005

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## **I. ASSIGNMENTS OF ERROR**

1. The trial court erred by ordering Appellant to pay \$345.16 per month in child support.

2. The trial court erred in finding that the entire balances of Appellant's UPS 401k account and Pacific Coast Benefits Trust account were community property.

3. The trial court erred by failing to equally split the \$6,000 in social security disability benefits received by the Appellee while the parties were still together.

4. The trial court erred by not including the Appellee's \$12,000 payment to Appellant in the spreadsheet attached to the trial court's Findings of Fact and Conclusions of Law.

## **II. STATEMENT OF THE CASE**

The Appellant Joshua Welborn and Appellee Heidi Welborn married on July 13, 1996. (CP 62-66) The Appellant began working for UPS in May 1992 and was employed by UPS at the time of the parties' marriage. (Appellant Trial Ex 124) While working at UPS, the Appellant had a UPS 401k account and another retirement account through UPS called Pacific Coast Benefits Trust. (Appellant Trial Ex 114) Shortly after the parties married, the Appellant terminated his employment with UPS in 1997. (Appellant Trial Ex 124) Appellant worked 693.7 hours in 1992, 1129.1 hours in 1993, 1312.8 hours in 1994, 1229.8 hours in 1995, 1611.8 hours in 1996, and 1437.9 hours in 1997. (Appellant Trial Ex 124) As such, Appellant worked and earned approximately 69% of his UPS 401k account

and his Pacific Coast Benefits Trust account benefits prior to marrying the Appellee. (Appellant Trial Ex 103, Appellant Trial Ex 114, Appellant Trial Ex 124)

The parties separated on January 10, 2014. (CP 63) The Appellee filed a petition for dissolution of marriage on January 27, 2014, and the parties entered into an agreed final parenting plan on December 18, 2014. (CP 64) There are three dependent children ages 8, 10, and 11. (CP 64) The parties have a split residential schedule with the children residing an equal amount of time with each parent. (CP 1-16) The Appellee was designated the custodian of the children for purposes of all other state and federal statutes which require a designation or determination of custody in even numbered years, the Appellant in odd numbered years. (CP 6)

The trial was held in this case on January 28, 2015 and January 29, 2015. At trial, Appellant submitted pay stubs from his current employer. (Appellant Trial Ex101) The pay stubs showed that he pays approximately \$477 per month in health insurance for himself and the children, which equates to a payment of approximately \$357 per month for health insurance for the children. (Appellant's Trial Ex101, pg. 5) The Appellee's pay stubs were admitted as an exhibit at trial and showed that she paid \$227 per month in child support. (Appellant's Trial Ex112, pg. 1)

The Appellant submitted a proposed Washington State Child Support Schedule Worksheet (“Appellant’s Worksheet”) at trial. (Appellant’s Trial Ex115) The Worksheet gave the Appellant a \$350 credit for monthly health care expenses and gave the Appellee a \$227 credit. (Appellant’s Trial Ex115, pg. 2)

On January 29, 2015, the trial court entered the Order of Child Support. (CP 46-61) The Appellant was found to have an actual monthly gross income of \$11,185.00, and the Appellee was found to have an actual gross income of \$8,012.00. (CP 29-30) The trial court ordered the Appellant to make a monthly transfer amount of \$115.05 per child, which totaled \$345.16 per month. (CP 29-30) The Order of Child Support stated that Appellant pays \$116 per month for health insurance for the children, and the Appellee pays \$227 per month. (CP 54) There were no health insurance credits on the trial court’s Washington State child support schedule worksheets (CP 46-61)

On January 30, 2015, the trial court entered a Decree of Dissolution. (CP 88) The Decree divided the parties’ property and liabilities. (CP 88) It was ordered that Appellee transfer \$12,000 in retirement funds from her Fidelity Roth IRA account to the Appellant’s Fidelity Roth IRA account. (CP 88, 64) Appellee was also ordered to pay Appellant the sum of \$12,000 as an

award to Appellant in lieu of a share of the Appellee's PERS retirement account. (CP 88, 64) The \$12,000 award also included an adjustment to the credit card obligations assumed by Appellee, because the credit card liabilities overstated Appellee's fair share by \$6,500. (CP 88, 64)

On January 30, 2015, the trial court filed Findings of Fact and Conclusions of Law ("Findings"). (CP 42-46) The trial court attached a spreadsheet to the Findings which explained that trial court's division of the parties' community property and liabilities. (CP 46) In the "Assets" section of the spreadsheet, the trial court notes that the Appellant received \$12,187 in social security disability payments while the parties were still together. (CP 46) The trial court does not reference the \$6,000 in social security disability payments received by the Appellee for the children while the parties were still together. (CP 46) The spreadsheet provides Appellant with \$12,000 from the Appellee's Fidelity Roth Rollover IRA. (CP 46) However, Appellee's \$12,000 payment to Appellant is not subtracted from any of her accounts or assets. (CP 46)

Lastly, the trial court's spreadsheet finds that the value of the Appellant's UPS 401k was \$24,363 on 1/1/2014 and that this balance was 100% community property. (CP 46) The trial court's spreadsheet also finds that the value of the Appellant's Pacific Coast Benefits Trust account was

\$6,169 on 6/1/2013 and that this balance was 100% community property.  
(CP 46)

### **III. STANDARD OF REVIEW**

A trial court's factual conclusions are reviewed under a "clearly erroneous standard." *State v. Walton*, 64 Wn.App. 410, 414, 824 P.2d 533 (1992). An appellate court reviews underlying questions of law de novo. *Mayer v. Sto Industries, Inc.*, 156 Wash.2d 677, 684, 132 P.3d 115 (2006).

### **IV. APPELLANT'S ARGUMENTS**

#### **A. The trial court erred by ordering Appellant to pay \$345.16 per month in child support**

##### **1. The parties have a split residential/custodial schedule**

A court can deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support payment. RCW 26.19.075(1)(d). When one parent has custody of at least one child, the support schedule is used to offset each parent's obligation to the other parent. *In re Marriage of Arvey*, 77 Wn. App. 817, 894 P.2d 1346 (1995). In *Arvey*, the Court determined the appropriate method of calculating support under a split-custody arrangement. *Id.* at 1349. The Court in *Arvey* found that once each parent's basic or net obligation has been determined, the trial court must adjust this figure to reflect each parent's proportional share. *Id.* at 1352. Then, each parent's proportional share depends on the number

of children in his or her household. *Id.* The *Arvey* court provided the following illustration for a 3-child split-custody arrangement:

Monthly Net Income = 3995.47 (father) 2015.15 (mother)

Combined Monthly Net Income = 6010.62

Basic Support Obligation Per Child (Economic Table) = 559  
(child #1) 559 (child #2) 559 (child #3)

Total Child Support Obligation = 559 (child #1 with father)  
559 (child #2 with mother) 559 (child #3 with mother) ----  
1677

Proportional Share of Income = .665(father) .335 (mother)

Each Parent's Basic Obligation = 1115.21 (father) 561.80  
(mother)

Each Parent's Net Obligation = 1115.21 (father) 561.80  
(mother)

Split Custody Adjustment = 2/3 of 1115.21 = 743.47 (father)  
= 1/3 of 561.80 = 187.27 (mother) 743.47 (father) -187.27  
(mother) -----

Transfer Payment Obligation = 556.20 (father owes mother)

*Id.* at 1351.

In the instant case, the parties have a split-custody arrangement. The children have an equal amount of time with each parent. (CP 1-16) The parenting plan mandates that the parties split and alternate custodial designations each year. (CP 6) The *Arvey* formula applies to this case as follows:

Combined Monthly Net Income = \$13,570.20

Basic Support Obligation Per Child = \$975 (child 1), \$975 (child 2), \$975 (child 3)

Total Child Support Obligation = \$2,925

Appellant's Proportional Share of Income = .559

Appellee's Proportional Share of Income = .441

Each Parent's Basic Obligation = \$1635.08 (Appellant)  
\$1,289.92 (Appellee)

Each Parent's Net Obligation = \$1635.08 (Appellant)  
\$1289.92 (Appellee)  
Split Custody Adjustment = 1/2 of \$1635.08 (Appellant) =  
\$817.54; 1/2 of \$1289.92 = \$644.96

Transfer Payment Obligation = \$817.54 – 644.96 = \$172.58  
(Appellant to Appellee)

Therefore, the trial court erred in ordering the Appellant to pay \$345.16 to the Appellee for child support. Appellant's monthly support obligation should not exceed \$172.58.

2. The trial court failed to provide health insurance payment credits in its child support calculations

Child support credits are provided in cases where parents make direct payments to third parties for the costs of goods and services which are included in the standard calculation support obligation. *See Washington State Child Support Schedule Definitions and Standards; see also RCW 26.19.050.* Here, the Appellant showed the trial court that he paid approximately \$350

per month in health insurance for the children through his employer. (Appellant Trial Ex101, pg. 5) The Appellee's pay stubs showed that she paid \$227 per month in child support. (Appellant Trial Ex112, pg. 1) Therefore, the trial court erred by not including health insurance payment credits in its Worksheets and by not reducing Appellant's child support obligation accordingly.

3. The trial court intended to provide the Appellant with residential credit using the "Supportcalc" formula, but the trial court's calculations were incorrect

Even if it is determined that the parties in this case had shared custody, as opposed to split custody under *Arvey*, the trial court still made a clear error in its child support calculations. The trial court was attempting to provide the Appellant with residential credit using "Supportcalc" software. However, the trial court's calculation of \$345.16 per month is clearly erroneous. The Appellant used "Supportcalc" and attached it to his Washington State Child Support Schedule Worksheets. (Appellant Trial Ex 115) If the trial court would have correctly inputted the numbers into "Supportcalc" to calculate the monthly transfer payment, it would have been significantly lower than \$345.16 per month. Therefore, the trial court committed clear error in ordering the Appellant to pay \$345.16 in child support.

**B. The trial court erred in finding that the entire balances of Appellant's UPS 401k account and Pacific Coast Benefits Trust account were community property**

The Appellee should not have been awarded 1/2 of Appellant's UPS 401k account and Pacific Coast Trust Benefits account balances. Separate property is property acquired before marriage or after separation, or acquired by one spouse separately by gift, bequest, devise, or descent. RCW 26.16.010; *In re the Marriage of Chumbley and Beckmann*, 150 Wn.2d 1, 74 P.3d 129 (2003). Retirement income is characterized as deferred compensation for past services and any portion of retirement income that was earned during the marriage is divisible upon dissolution. *Marriage of Kollmer*, 73 Wn. App. 373, 870 P.2d 978 (1994). The trial court is responsible for determining as a matter of law the correct salary and valuation dates to be used in calculating the community share of the retirement account's value. *Marriage of Hurd*, 69 Wn. App. 38, 848 P.2d 185 (1993).

Here, the trial court erroneously found that the entire balance of the Appellant's UPS 401k account and Pacific Coast Benefits Trust account were community property. It is clear that approximately 69% of the balances were earned by Appellant prior to the parties' marriage and are therefore Appellant's separate property. (Appellant Trial Ex 124, Appellant Trial Ex 114, Appellant Trial Ex 103) The trial court's Findings on the UPS 401k

account balance and the Pacific Coast Trust Benefits account balance must be reversed.

**C. The trial court erred by failing to equally split the \$6,000 in social security disability benefits received by the Appellee while the parties were still together**

RCW 26.09.080 governs disposition of property and liabilities. In this case, the \$6,000 in social security disability benefits received by the Appellee should have been split equally among the parties. Alternatively, the Appellant should have been awarded a \$3,000 credit toward child support. The trial court clearly erred by not dividing the \$6,000 received by the Appellee.

**D. The trial court erred by not including the Appellee's \$12,000 payment to Appellant in the spreadsheet attached to the trial court's Findings of Fact and Conclusions of Law**

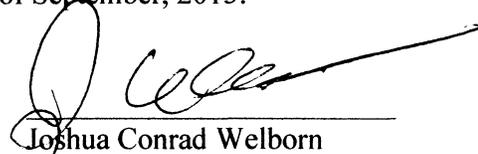
The trial court ordered Appellee to transfer \$12,000 in retirement funds from her Fidelity Roth IRA account to the Appellant's Fidelity Roth IRA account. (CP 88, 64) Appellee was also ordered to pay Appellant the sum of \$12,000 as an award to Appellant in lieu of a share of the Appellee's PERS retirement account. (CP 88, 64) The spreadsheet attached to the trial court's Findings provides Appellant with \$12,000 from the Appellee's Fidelity Roth Rollover IRA. (CP 46) However, Appellee's \$12,000 payment to Appellant is not subtracted from any of her accounts or assets. (CP 46)

This is legal error, and the trial court's Findings must be reversed.

**V. CONCLUSION**

Appellant Joshua Welborn respectfully requests that this Court reverse and remand to the trial court to vacate and modify judgments awarded against Appellant for child support and property distribution. This Court should award attorney fees to Appellant.

Respectfully submitted this 4<sup>th</sup> day of September, 2015.



Joshua Conrad Welborn  
Appellant  
408 15<sup>th</sup> Avenue  
Kirkland, WA 98033  
(206)229-1005