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Petition for Supreme Court Review
Court of Appeals No. 319610-III
Franklin County Superior Court Cause No. 12-3-50160-9

SUPREME COURT
OF THE STATE OF WASHINGTON

SHANNON MARIE LANGFORD,

Respondent,

vs.

CHAD FRANKLIN LANGFORD,

Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Chad Langford hereby petitions this Honorable Court for discretionary review of the Court of Appeals decision which in a 2-1 split affirmed the trial court's ruling on a child support deviation.

B. COURT OF APPEALS DECISION

Chad Langford seeks review of **Langford v. Langford**, 2014 WL 5307956 (hereinafter '*Langford*'), a decision by Division III of the Court of Appeals, issued on October 16, 2014. Chad Langford timely filed a motion for reconsideration which was denied on November 20, 2014. Pursuant to RAP 13.4, this petition is timely.

C. ISSUES PRESENTED FOR REVIEW

1. Are both parents the support obligor and support obligee in an equally shared residential custody arrangement?

2. May the Superior Court place the entire child support obligation on one parent when both parents share residential placement?

3. May the court designate a parent as 'obligor' in a shared custody situation simply because that parent has a higher income?

4. Does the Legislature's intention 'to equitably apportion child support' permit a judge to use his/her discretion in placing the entire support obligation on one parent in an equally shared custody situation?

D. STATEMENT OF THE CASE

Chad Langford and Shannon Langford were married in 2000. CP

194. The parties have two (2) children together, ages 6 and 7 at the time of trial. CP 76. The dissolution action was filed in May 2012. CP 191-97. Custody of the children was shared equally during the pendency of the action. CP 180-88.

Trial occurred in May, 2013 and the focus of trial was the distribution of assets and liabilities, support, and some minor parenting plan issues. Prior to trial, the parties agreed to equal custody of the two (2) children by way of alternating each week just as they had done since separation.

It was determined that Shannon Langford's monthly net income was $3,429.46 and Chad Langford's monthly net income was $6,998.32. CP 48-52, TP 24. Accordingly, Shannon Langford's gross child support obligation was $710.64 and Chad Langford's gross child support obligation totaled $1,449.36. CP 49. Given that the children spent the exact same amount of time residing in the home of each parent, Chad Langford proposed a residential deviation pursuant to RCW 26.19.075(1)(d) that provided a credit in the amount of $1,013.00 resulting in a transfer payment of $472.89. CP 149-154. Chad Langford contended that a deviation in the form of a credit or offset was appropriate to account for Shannon Langford's child support obligation. The trial court denied Chad Langford's request and ordered him to pay the entire gross child support obligation of $1,450.77.

The trial court addressed the request for a deviation in a perfunctory manner during its oral ruling, stating only that the court considered the testimony and the best interests of the kids in denying the requested deviation. RP 24-25. In fact, with regard to the court's denial of the deviation, the court stated only the following:

> "And I considered the testimony, and I considered what would be in the best interest of the kids, and I thought a lot about this particular issue. I felt that was important, keeping in mind the statute and keeping in mind the testimony that was provided to this court. And so I'm not going to grant the residential credit in this case. I do not believe that it's appropriate, and I'm not going to grant that."

RP 24-25.

Shannon Langford prepared the Findings of Fact/Conclusions of Law. The trial court entered Findings of Fact which provide only the following with regard to the requested deviation:

> "The court has heard extensive argument regarding the application of a residential credit for the father for calculating his monthly support obligation. The court has found that no residential credit shall be granted to the father." CP 78.

Chad Langford appealed. As a result, Division III issued a 2-1 opinion affirming the trial court and finding no abuse of discretion relative to the denial of Chad Langford's requested deviation. The majority readily recognized that the trial court's Findings of Fact were "abbreviated" and "unnecessarily complicates review". *Langford*, at 5. The Court went on to

"urge diligence in this area" as some form of admonishment within an unpublished decision. Id. Ultimately, the majority concluded that the sparse written Findings of Fact were adequate when coupled with trial court's equally sparse oral ruling. Id.

The dissent disagreed. The Honorable Judge Lawrence-Berrey stated that the majority combined *insufficient* written findings with an *erroneous* "best interest of the kids" oral finding. *Langford Dissent* at 1. (emphasis in original). Judge Lawrence-Berrey further noted that 'Chapter 26.19 RCW, which governs setting child support, does not contemplate a "best interest of the kids [sic]" standard.' Id.

Dissenting Judge Lawrence-Berrey agreed with the majority's analysis for the presumptive child support obligation which is determined by reference to the statute's economic table. Id. He also agreed with the majority's analysis that the presumptive child support obligation for an obligor parent is determined by multiplying the obligor parent's percentage of total net income by the basic support obligation. However, Judge Lawrence-Berrey parted with the majority when it claimed "[t]he obligor is the parent with the greater theoretical support obligation." *Langford*, at 3. Judge Lawrence-Berrey correctly noted that because both parents have equal overnights with their children, there is no 'custodial parent'. *Langford Dissent*, at 2. The judge continued, "[i]n such a scenario, it is equally random and erroneous to order the father to pay his

presumptive payment to the mother as it would be to order the mother to pay her presumptive payment to the father. Yet the former is exactly what the lower court did." Id.

Finally Judge Lawrence-Berrey concluded that "[h]ere the legislative purpose of achieving a well-reasoned decision has been thwarted not once but twice: First, the written findings clearly are inadequate. The majority concedes this; second, the oral finding applies the wrong legal standard, not the standard set forth in RCW 26.19.075." *Langford Dissent* at 4.

E. ARGUMENT

1. The Court of Appeals decision in Langford is inconsistent with decisions of the Supreme Court.

Obviously both parents have a duty to support to their children. The legislature has declared that the support obligation must be equitably apportioned between the parents. RCW 26.19.001. This court has held that the Child Support statute must be construed to achieve the overall purpose of the act. **Anderson v Morris**, 87 Wn.2d 706, 716, 558 P.2d 155 (1976). "If alternative interpretations are possible, the one that best advances the overall legislative purpose should be adopted". Id. "Declarations of policy in an act, although without operative force in and of themselves, serve as an important guide in determining the intended effect of the operative sections." **Oliver v Harborview Med. Ctr.**, 94 Wash.2d 559, 565, 618

P.2d 76 (1980), *quoting* **Hearst Corp. v Hoppe**, 90 Wn.2d 123, 128, 580 P.2d 246 (1978). One of the overriding policies and a standard of the statewide child support schedule is that the obligation to support a child should be equitably apportioned between the *parents* of the child. **Harmon v Department of Social and Health Services**, 134 Wn.2d 523 (1998)(emphasis in original); **State ex rel MMG v Graham**, 159 Wn.2d 623, 627, 159 Wn.2d 623 (2007); **In re Marriage of Ayyad**, 110 Wn.App 462, 467, 38 P.3d 1033 (2002). Another aim of the law is to provide uniformity throughout the state for calculating support obligations. RCW 26.19.001(3); **In re Marriage of Sacco**, 114 Wash.2d 1, 3, 784 P.2d 1266 (1990). The Court of Appeals decision in *Langford* is inconsistent with both. The *Langford* court ignores its role ensuring the support obligation is apportioned equitably, concludes Chad Langford the obligor based on his higher income, and ultimately allows a bad result based on scant findings and a mistaken legal standard.

A. In an equally shared residential custody arrangement, each parent is an obligor and obligee by definition.

The Court of Appeals in *Langford* stated "[t]he obligor parent is the parent with the greater theoretical support obligation." 2014 WL 5307956, p. 3. There is no statutory authority or case law to support such conclusion. In fact, just the opposite is true, "placing the entire child support obligation on one parent were the residential schedule is shared also would not meet the Legislature's intention of equitably apportioning

the child support obligation between both parents". **State ex rel. M.M.G. v Graham**, 123 Wash. App. 931, 940, 99 P.3d 1248 (2004) *reversed on other grounds*, 159 Wn.2d 623 (2007). Stated differently and affirmed by the highest court, the entire support burden should not be placed on one parent when both parents share residential time with both children. **State ex rel. MMG v Graham**, 159 Wn.2d 623, 631, 152 P.3d 1005 (2007) (Emphasis added). Yet this is precisely what occurred in *Langford* since Chad Langford was conclusively designated as the sole 'obligor' based on his higher income. As a result of this designation, Chad Langford alone, was subject to the court's discretionary ruling on a deviation request which, according to Division III, would necessarily force the entire support obligation on him despite this Court's acknowledgment that such occurrence should not be placed on one parent in shared custody situations. **Graham**, 159 at 623. The Court of Appeals in *Langford*, forgets that Shannon Langford owes a duty to support her children too. The *Langford* court further ignores that the mutual duty to support one's children must be equitably apportioned between the parents. Consequently, according to *Langford*, Chad Langford is required to pay 71% of the basic support obligation to Shannon Langford and Shannon Langford's basic support obligation of 29% is simply non-existent. Such result is not what the legislature nor this court envisioned.

B. Without adequate findings of fact, the Court of Appeals should not have passed on the ultimate result.

The Court **In re the Marriage of Booth**, 114 Wn.2d 772, 791 P.2d 519 (1990) held that, where specific findings of fact denying a deviation are not made, a trial court's oral opinion will be sufficient if it articulates the basis for the court's resolution of the issue. Id. at 777. There, the husband requested a support deviation. Id. at 773-74. The trial court denied the deviation and stated that if it were to grant the deviation, it would have to articulate that the combined income of the parties was in excess of what the children needed. Id. at 774. The trial court then amended the decree and inserted the following language:

> (1) Under the State Child support guidelines effective July 1, 1988, this Court has no discretion to make a downward adjustment from scheduled support *based upon the resources available to [wife] by virtue of her second marriage, or any of the other circumstances outlined in [husband's] affidavit*;
> Id. (emphasis in original). Consequently, the husband appealed the denial of his requested support deviation. Id.

Upon review, this court recognized that the trial court made no specific findings of fact regarding the husband's reasons in support of the deviation. Id. at 777. However, the court stated that "upon review of the trial court's oral opinion and its order amending the decree, we find the court did consider the reasons given for deviation in [husband's] affidavit when it decided not to deviate from the Support Schedule." Id. Of particular importance is the language in the amended decree which was

emphasized by the Supreme Court. Id. at 774. The trial court's order stated that consideration to the parties' resources and the reasons articulated by the husband were properly considered by the trial court in reaching its determination. Id. at 779. This is the proper method for denying or approving a requested support deviation.

Here, Chad Langford's requested deviation was denied despite no indication that the trial court considered the resources available to the children in each home and no finding that the children would be denied adequate support if the deviation was granted. The trial court simply made a finding that the deviation requested was denied and opined orally that denying the deviation was in the best interests of the children. Thus, the case is distinguishable from **Booth**, where the Supreme Court held that "[t]he lack of specific findings of fact is not fatal" on review of a deviation denial if the oral opinion provides an adequate basis for the trial court's resolution of the issue. Id. at 777. There, the oral opinion and amended order both reflected that the trial court was considering the total amount of resources available to the parties and the availability of such resources to the children. Id. at 774.

Conversely, the findings of fact identified in *Langford* merely state that a deviation was denied. CP 78. Wholly absent from the findings is any basis for Chad Langford's deviation denial. Moreover, the trial court's oral ruling failed to provide any additional insight into the court's mind as to

why the credit was denied, such as "insufficient funds would result." *See* RP 25. Along these lines, there was no factual finding that Shannon Langford's household would be insufficient whatsoever. Ultimately, the trial court got confused and applied a 'best interest of the kids' standard to the child support analysis. Id. While the Court of Appeals in *Langford* candidly admitted that the usual finding in such cases is the 'deviation will result in insufficient funds', it stretched exceedingly far to conclude the 'combination' of the oral ruling and the findings somehow satisfy RCW 26.19.075(3) for review purposes. *Langford,* p. 5. Indeed, there was no attempt to articulate a basis for the denial beyond the erroneous best interest standard. Certainly the trial court's oral ruling misses the mark in terms of providing an adequate basis for denial, as required by **Booth, supra.**

2. The *Langford* decision is not consistent with other decisions from the Court of Appeals.

A Court of Appeals Division I case concerning a modification of child support strongly contradicts *Langford.* See **In re Marriage of Holmes,** 128 Wn.App. 727, 736, 117 P.3d 370 (2005). While **Holmes** is not a shared residence case, the court's rejection of arguments advanced and the reasoning involving which parent is responsible for the transfer payment are highly instructive as no case in Washington determines which parent is the obligor and obligee in a shared residence arrangement. In **Holmes,** the mother challenged termination of child support after the child

moved in with his father. Id. The mother argued that the trial court erred in terminating the support obligation because the parent with the larger income is statutorily presumed to make the child support transfer payment. Id. She contended that since the father has the larger income, he was required to pay. Id. The mother relied on **Marriage of Casey**, 88 Wn.App. 662, 665, 967 P.2d 982 (1997) to support her argument that the father should pay support despite the father having primary residential custody. There, the court stated:

> "RCW 26.09.100(1) requires the trial court, after considering "all relevant factors," to order either **or both** parents to pay child support in an amount determined under RCW 26.19. The trial court calculates the total amount of child support, allocates the basic support obligation between the parents "based on each parent's share of the combined monthly net income," RCW 26.19.080(1), then orders the parent with the greater obligation to pay the other a "support transfer payment," RCW 26.19.011(9) (emphasis added). Id.

However, the **Holmes** court expressed that the portion of the above quote from **Casey, supra**, stating "[t]he trial court ... then orders the parent with the greater obligation to pay the other a 'support transfer payment' **is erroneous**. 128 Wn.App. at 777 (emphasis added). Rather, **Holmes** held that RCW 26.19.011(9) defines 'support transfer payment' as "the amount of money the court orders one parent to pay another parent or custodian for child support after determination of the standard calculation and deviations." Id. The court plainly stated that this

subsection does not direct which parent is to make the payment. **Holmes**, 128 Wn.App. at 737. Indeed, the parent who ultimately receives the transfer payment is different from an earlier determination as to which parent is properly the obligor and obligee. Blurring such classifications permits fatal flaws in a shared residence arrangement.

The mother in **Holmes** further argued that even though both parents have support obligations under the statute, RCW 26.10.075(2) requires the court to order each parent "to pay the amount of support determined by using the standard calculation." Id. She reasoned that one parent or the other will have a greater obligation based upon proportional income, making him/her presumptively responsible for the net support transfer payment before any consideration of the reasons to deviate. Id. Again, the **Holmes** court disagreed offering the following explanation:

> "RCW 26.19.075 establishes the standards for deviations from the standard calculation. But unless the court finds reasons for a deviation, RCW 26.19.020, not RCW 26.19.075(2) is to preclude a deviation from being granted unless (1) the parties have fully disclosed their resources and (2) the court enters specific reasons for the deviation. Nothing in RCW 26.19.075 requires that each parent make a payment to the other or assumes that the parent with the greater presumptive support obligation will be responsible for a net transfer payment. Instead, RCW 26.19.075(2) merely affirms that absent a basis for deviation each parent will pay the amount of the standard calculation to the other, if that parent is obligated to make a transfer payment. **Holmes**, 128 Wn.App at 737-8. (Emphasis added).

The above reading of RCW 26.19.075 is supported by the child support worksheets themselves, which are required by RCW 26.19.050 and appended to chapter 26.19. The child support worksheets provide for a calculation of the basic respective child support obligations and a presumptive transfer payment for each parent. Historically, child support payments have been the obligation of the noncustodial parent. Id. Nevertheless, it was the province of the superior court to determine which parent would pay child support and how much to be paid. **Holmes**, 128 Wn.App. at 738. The historical presumption was reflected in the Uniform Child Support Guidelines, which were approved in 1982 by the Washington State Association of Superior Court Judges. Id. Under the ASCJ Guidelines, "the support to be paid by the non-custodial parent is that fraction of the scheduled amount in the proportion that the parent's income bears to the total income of both parents." Washington State Child Support Commission, Final Report, November 1, 1987, at 6. The obligation of the custodial parent was satisfied by providing for the child in that parent's home, as evidenced by the fact that the custodial parent received a support payment and did not make one. Id. However, these guidelines were replaced by the child support guidelines as adopted by the Washington Child Support Commission and as subsequently enacted by the legislature as chapter 26.19. Yet, such chapter focuses on the method

of calculation of child support, not on which parent would make payment to the other. **Holmes**, 1287 Wn.App. at 739. (Emphasis added).

Nevertheless, as part of the Parenting Act, the legislature removed the concepts of custody and visitation from the dissolution statute, RCW 26.09. In their place, the legislature imposed the general requirement of a parenting plan that establishes a residential schedule, allocates decision making, etc. See RCW 26.09.184(2). RCW 26.09.100(1) as amended, vested the superior court with authority to "order either **or both parents** to pay child support in an amount determined under RCW 26.19." (Emphasis added). However, the legislature did not change the historical presumption in practice that the parent with whom the child resided a majority of the time would satisfy the support obligation by providing for the child while in his or her home and that the other parent would make a child support transfer payment. As the court explained:

> "[i]n those situations [where children reside a majority of the time with one parent], the obligor parent is the one with whom the children do not reside a majority of the time and that parent makes a transfer payment to the parent with whom the children primarily reside." **State ex rel. MMG v Graham**, 123 Wn.App at 939.

Of course this presumption is not without exception. The exception is created by deviation based upon a finding that the income of the parent with whom the child does not reside a majority of the time is insufficient to provide for the basic needs of the child. RCW 26.19.075(1)(d). In

Holmes, the court found that a large disparity in incomes was immaterial. 128 Wn.App. at 741. After noting the large disparity in **Holmes**, the court stated that the relevant issue was whether a deviation should be granted, "[t]his requires a showing of need by [the child] for greater support while in his mother's home, not merely a significant difference in the income of the parents." Id.

In *Langford*, the Court of Appeals concluded Chad Langford was the obligor simply because his income higher. *Langford* at 3. Along these lines, the parent with the higher income will always be the 'parent with the greater theoretical support obligation'. This conclusion is in direct conflict with **Holmes** as such arguments were advanced and rejected. Whether it is a shared residential schedule or majority of time schedule, the analysis is the same. If a large disparity in income is immaterial as is under **Holmes**, *Langford* inappropriately concluded such income disparity is dispositive for purposes of designating Chad Langford as the obligor. Along these lines, Shannon Langford as joint obligor/obligee, must necessarily account for her proportional share of child support given the shared custody schedule.

Further, the Court of Appeals has stated, "[d]eviation from the standard support obligation *is appropriate* when it would be inequitable not to do so." **In re Marriage of Pollard**, 99 Wn. App. 48, 55, 991 P.2d 1201 (2000) (emphasis added) (citing **In re Marriage of Burch**, 81 Wn.

App. 756, 760, 916 P.2d 443 (1996)). In the instant matter, the trial court made no findings of fact, made no oral ruling, and made no determination at all regarding the equitable or inequitable nature of the requested deviation. Rather, the trial court merely stated that consideration of what was in the best interests of the children was given. RP at 25. This does not comport with published opinions and does not provide Chad Langford with a sufficient basis for the denial of his requested deviation.

Division I of the Court of Appeals has held that the trial court may exercise its discretion to order a deviation when findings of fact and conclusions of law assure that the children "are protected with adequate, equitable and predictable child support as required by RCW 26.19.001." **In re Marriage of Oakes**, 71 Wn. App. 646, 652, 861 P.2d 1065 (1993). In **Oakes**, the trial court denied the deviation and concluded that the support amount was "established to provide a reasonable and equitable standard of living for each household." Id.

Thus, when a parent seeks a statutorily permissible deviation, the trial court is to consider whether the children are protected with adequate, equitable and predictable support. This is especially true in cases such as the present where the parties are both gainfully employed and share in joint custody of the children.

Here, despite the deviation being requested and supported with evidence at trial, the court provided no meaningful findings of fact or oral

rulings as to whether the requested deviation would provide or deny the children with adequate, equitable and predictable support. No mention or findings regarding the reasonable and equitable standard of living at each household was issued upon by the trial court. The trial court's ruling can only be interpreted as holding that a larger support obligation is necessary for a reasonable and equitable standard of living. This is not the standard set forth by the Legislature. If it were, there would be no permissible basis for a downward support deviation and the statute allowing downward deviations would be moot.

Importantly, Chad. Langford is not suggesting that he is entitled to a downward deviation as a matter of law. Rather, Chad Langford is entitled to appropriate findings of fact regarding his requested deviation. The case of **In re Marriage of Schnurman**, 178 Wn. App. 634, 316 P.3d 514 (2013) is illustrative of findings of fact which properly support a deviation denial, and in doing so, **Schnurman** highlights the deficiencies of the trial court in the instant case. There, the parties shared residential custody and the trial court made the following findings of fact when denying the father's requested deviation:

> While the Husband will be spending substantial time with the children, there is no evidence this will significantly increase his costs to support the children or significantly reduce Wife's expenses to support the children. Allowing a downward deviation from the standard child support calculation will also result in insufficient funds for the Wife's household.

Id. at 637.

The **Schnurman** court continued:

> If the court considers a deviation based on residential schedule, it must follow a specific statutory analysis:
>
> The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving temporary assistance for needy families. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.
>
> The trial court must enter written findings of fact supporting the reasons for any deviation or denial of a party's request for deviation.

Id. at 639-40 (internal citations omitted).

The Court of Appeals stated that a deviation request "should focus on the legislature's primary intent to maintain reasonable support for the children in each household." Id. at 641. In **Schnurman**, the trial court explicitly found that a deviation was not warranted because the father's time with the children did not significantly increase his costs to support them and a downward deviation would leave the mother with insufficient

funds. *Id.* at 643. The Court of Appeals stated that "[t]his was the correct process." Id.

Indeed, the Court of Appeals and support statutes have provided several instances of authority which require specific findings to be made when granting or denying a support deviation. Here, the trial court made no findings regarding how the requested deviation would either negatively or positively impact the children's household living conditions. In fact, the trial court's findings do not sufficiently indicate what evidence and factors were considered in denying the deviation. As such, *Langford's* affirmation of the trial court's determination is inconsistent with prior, published appellate opinions, and this matter is appropriate for Supreme Court review.

3. This petition involves an issue of substantial public interest.

Several factors are considered when determining whether a case presents issues of substantial public interest. **In re Marriage of Horner**, 151 Wn.2d 884, 892, 93 P.3d 124 (2004). Those factors include "(1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur." Id.

Here, the issue regarding which parent is the obligor in a shared residential arrangement is one of substantial public interest. Certainly dissolution litigants are legion in courthouses throughout the State of

Washington. In fact, several cases have gone up with shared custody situations desperately seeking guidance or the ability to utilize **Arvey**, supra, by analogy. The court has declined such requests. Nevertheless, while **Arvey**, provides a 'formula' for split residential arrangements, parents in an equally shared residential situation are left without any guidance to specifically determining which parent gets the favorable 'obligee' status and the other must therefore must seek a discretionary deviation. Appropriate and consistent application of the deviation standards throughout the State falls squarely in the realm of public interest. Indeed, the issue of support directly impacts the children to whom the support statutes are designed to protect.

F. CONCLUSION

Based on the foregoing reasons, Chad Langford respectfully requests this Honorable Court grant this petition for review.

DATED this 22nd day of December, 2014.

Respectfully submitted,

TELQUIST ZIOBRO MCMILLEN CLARE, PLLC

Andrea J. Clare

ANDREA J. CLARE, WSBA #37889

CERTIFICATE OF FILING AND SERVICE

The undersigned hereby declares, under penalty of perjury, under the laws of the State of Washington, that on December 22 2014, I caused the original of the foregoing document to be sent for filing with the Court of Appeals, Division III of the State of Washington. I also caused a true and correct copy of the foregoing document to be served on the following counsel, via fax and Inter-City Legal Messenger Service to:

Defoe Pickett Law Office
830 N. Columbia Center Blvd. Suite A1
Kennewick, WA 99336

DATED this 22 day of December, 2014, at Richland, Washington.

TELQUIST ZIOBRO McMILLEN CLARE

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Thank you!

FILED
OCT. 16, 2014
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
DIVISION THREE

In re the Marriage of:	)	No. 31961-0-III
	)	
SHANNON MARIE LANGFORD,	)	
	)	
Respondent,	)	
	)	
v.	)	UNPUBLISHED OPINION
	)	
CHAD FRANKLIN LANGFORD,	)	
	)	
Appellant.	)	

BROWN, A.C.J. – Chad F. Langford appeals the trial court's denial of his request to equally split child support with Shannon M. Langford. He contends the court erred by not granting him a residential schedule deviation since the parties stipulated to split residential time with their two children. We find no abuse of discretion, and affirm.

FACTS

The Langfords married in 2000, had two children, and separated in 2012. Ms. Langford works for the State of Washington's Department of Social and Health Services with a net monthly income of $3,429.46. Mr. Langford is a partner with an advertising company with a monthly net income of $6,998.32. The parties do not dispute the

court's net income calculation. In the final parenting plan, the court adopted the parties' stipulation to "share the children equally in one week increment." Clerk's Papers (CP) at 54. The basic child support obligation for both children is $2,102. The court allocated .671 of the support obligation to Mr. Langford and .329 to Ms. Langford. Mr. Langford requested a residential schedule deviation to $472.89 per month for the resulting $1,449.36 per month transfer payment using a formula he based upon the equal residential time he spends with the children.

The court denied his request, stating, "With regard to the residential credit, there was argument that it should be granted . . . and I considered what would be in the best interest of the kids . . . . I'm not going to grant the residential credit in this case. I do not believe that it's appropriate." Report of Proceedings (RP) at 24-25. In its findings of fact, the court reiterated, "The court has heard extensive argument regarding the application of a residential credit for the father for calculating his monthly support obligation. The court has found that no residential credit shall be granted to the father." CP at 78 (Finding of Fact 2.20). Mr. Langford unsuccessfully requested reconsideration. He now appeals.

ANALYSIS

The issue is whether the trial court erred by abusing its discretion in denying Mr. Langford's request for a residential schedule deviation when calculating child support. Mr. Langford contends he should have been granted a deviation since both parents equally share residential time.

We review a trial court's decision on an order of child support for an abuse of discretion. *State ex rel. M.M.G. v. Graham*, 159 Wn.2d 623, 632, 152 P.3d 1005 (2007). A trial court abuses its discretion if the decision rests on unreasonable or untenable grounds. *In re Marriage of Leslie*, 90 Wn. App. 796, 802-03, 954 P.2d 330 (1998). We will not reverse the trial court's decision absent a manifest abuse of discretion. *Id.* Moreover, the "reviewing court cannot substitute its judgment for that of the trial court unless the trial court's decision rests on unreasonable or untenable grounds." *Id.* at 802.

Chapter 26.19 RCW sets forth the child support schedule. In determining the amount of child support owed, the trial court begins by setting the basic support obligation. RCW 26.19.011(1). This is based on the statute's economic table based on the parents' combined monthly net income considering the number and age of the children. RCW 26.19.011(1). The economic table is presumptive for combined monthly net incomes of $12,000 or less, the case here. RCW 26.19.065. The court next allocates the child support obligation between the parents based on each parent's share of the combined monthly income. RCW 26.19.080(1). The court then determines the standard calculation, the presumptive amount of child support owed by the obligor parent to the obligee parent. RCW 26.19.011(8). The obligor is the parent with the greater theoretical support obligation. Here, Mr. Langford is the obligor parent.

The next step, is to consider any deviations from the support obligation. RCW 26.19.011(4), (8). Relevant here is a requested deviation downward based on

residential schedule.[1] RCW 26.19.075(1). "The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment." RCW 26.19.075(1)(d). The purpose of granting a deviation is to recognize the "increased expenses" that a parent sometimes has when placement is shared. RCW 26.19.075(1)(d). The court, however, "may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child." *Id.* The trial court must enter written findings of fact supporting the reasons for any deviation or denial of a party's request for deviation. RCW 26.19.075(3).

The court considered Mr. Langford's request for a deviation and stated in its oral ruling, "I considered what would be in the best interest of the kids . . . . I'm not going to grant the residential credit in this case. I do not believe that it's appropriate." RP at 25. In its findings of fact, the court reiterated, "The court has heard extensive argument regarding the application of a residential credit for the father for calculating his monthly support obligation. The court has found that no residential credit shall be granted to the father." CP at 78 (finding of fact 2.20).

Mr. Langford argues this is insufficient. Where a court must enter required findings, those "findings must be 'sufficiently specific to permit meaningful review.'" *In re Det. of LaBelle,* 107 Wn.2d 196, 218, 728 P.2d 138 (1986). The findings should

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[1] Before 1991, this deviation was referred to as a residential credit. *In re Marriage of Schnurman*, 178 Wn. App. 634, 640, 316 P.3d 514 (2013) (citing Helen Donigan, *Calculating and Documenting Child Support Awards Under Washington Law*, 26 Gonz. L. Rev. 13, 45 (1991), *review denied*, 180 Wn.2d 1010 (2014)).

indicate the factual bases for the ultimate conclusions, but the degree of particularity required depends on the circumstances of each case. *Id.* When written findings are unclear, we may look to the trial court's oral ruling to help interpret the implicit findings. *In re Marriage of Kimpel*, 122 Wn. App. 729, 735, 94 P.3d 1022 (2004). The court in its oral ruling stated it considered the financial information of the parties and that reducing the presumptive child support amount would not "be in the best interest[s] of the kids" and therefore, not "appropriate." RP at 25. While the usual finding in these cases is that the deviation will result in insufficient funds to the obligee's household, RCW 26.19.075(3) merely requires the court to enter written findings of fact "that specify reasons for any deviation or any denial of a party's request for any deviation." The trial court's abbreviated finding of fact unnecessarily complicates appellate review. We urge diligence in this area. Nevertheless, since we may review the oral ruling in conjunction with the court's finding of fact, the combination satisfies RCW 26.19.075(3) for review purposes.

Next, Mr. Langford argues the court should use a concise formula like found in *In re Marriage of Arvey*, 77 Wn. App. 817, 894 P.2d 1346 (1995). The *Arvey* court established a formula for determining child support when one child resides primarily with one parent and another child resides primarily with the other parent. *Id.* at 939. Mr. Langford argues this formula should be used where parents have equal residential placement. This argument has been rejected by our Supreme Court in *Graham*.

In *Graham*, Michelle Cunliffe and Richard Graham shared equal residential time with their two daughters. 123 Wn. App. at 933. The trial court estimated Mr. Graham's net monthly child support obligation to be $872 and Ms. Cunliffe's to be $437. *Id.* at 934. However, the court deviated downwards from Mr. Graham's standard calculation, finding that the girls spent significant time with him and the deviation did not result in insufficient funds for Ms. Cunliffe. *Id.* Several years later, the State petitioned for a modification. In response, Mr. Graham asked the trial court to apply *Arvey* and reduce his support obligation further because of the children's residential time with him. *Graham*, 123 Wn. App. at 933. Division One of this court rejected Mr. Graham's *Arvey* based argument. *Id.* at 940-41. Our Supreme Court affirmed, holding the plain text of RCW 26.19.075 gives trial courts discretion to deviate from the standard calculation based on residential schedule; thus, a new formula was not necessary. *In re Marriage of Schnurman*, 178 Wn. App. 634, 636, 316 P.3d 514 (2013), *review denied*, 180 Wn.2d 1010 (2014). Recently, Division One of this court reiterated, "[T]he standard calculation and residential schedule deviation in the child support schedule apply when parents share equal residential time." *Schnurman*, 178 Wn. App. 634, 643, 316 P.3d 514 (2013) *review denied*, 180 Wn.2d 1010 (2014).

Based on both *Graham* and *Schnurman*, the trial court followed the correct process. The court first determined the parties' combined monthly net income. The court identified Mr. Langford as the obligor parent since his obligation was greater than Ms. Langford's. Using the standard calculation, the court ordered Mr. Langford to pay

Ms. Langford a $1,449.36 monthly transfer payment. Upon Mr. Langford's request, the court considered whether his shared residential time with the children necessitated a downward deviation. The court found that it did not because it was not in the children's best interest and inappropriate based on the case facts. This process was correct. The trial court was not bound to apply Mr. Langford's requested deviation. Accordingly, the trial court did not abuse its discretion in ordering a transfer payment from Mr. Langford to Ms. Langford based on the standard calculation.

Ms. Langford requests attorney fees under RCW 26.09.140, which allows this court, in its discretion, to order a party to pay for the cost to the other party of maintaining the appeal, including attorney fees. This provision gives the court discretion to award attorney fees to either party based on the parties' financial resources, balancing the financial need of the requesting party against the other party's ability to pay. *In re Marriage of Pennamen*, 135 Wn. App. 790, 807-08, 146 P.3d 466 (2006). Under RAP 18.1(c), the parties had until 10 days prior to the date this appeal is set on the docket to file affidavits, setting forth their financial need and ability to pay. They did not comply; thus, Ms. Langford's request is denied.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the

Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Brown, A.C.J.

I CONCUR:

Korsmo, J.

LAWRENCE-BERREY, J. (dissenting) — The majority affirms the lower court's decision to deny the father a residential credit deviation. In doing so, the majority combines *insufficient* written findings with an *erroneous* "best interest of the kids" oral finding. Chapter 26.19 RCW, which governs setting child support, does not contemplate a "best interest of the kids [sic]" standard. Because two wrongs do not make a right, I dissent.

I agree with the first part of the majority's analysis: The presumptive child support obligation is determined by reference to the statute's economic table. This table uses the parents' combined net monthly income and the number and ages of the children to determine the basic support obligation. This table uses these variables to arrive at a precise figure for parents with combined net incomes of $12,000 and less.

I also agree with the second part of the majority's analysis that the presumptive child support obligation for an obligor parent is determined by multiplying the obligor parent's percentage of total net income by the basic support obligation.

I part with the majority when it states, "[t]he obligor is the parent with the greater theoretical support obligation." Majority at 3. Under settled law, the obligor parent is the noncustodial parent:

> Child support payments have historically been the obligation of the noncustodial parent. . . . The historical presumption was reflected in the Uniform Child Support Guidelines, which were approved in 1982 by the Washington State Association of Superior Court Judges (ASCJ).
> . . . As this court recently noted,
> [i]n those situations [where children reside a majority of the time with one parent], the obligor parent is the one with whom the children do not reside a majority of the time and that parent makes a transfer payment to the parent with whom the children primarily reside.

In re Marriage of Holmes, 128 Wn. App. 727, 738-39, 117 P.3d 370 (2005) (quoting *State ex rel. M.M.G. v. Graham*, 123 Wn. App. 931, 939, 99 P.3d 1248 (2004), *aff'd in part, rev'd in part on other grounds*, 159 Wn.2d 623, 152 P.3d 1005, *abrogated on other grounds by In re Marriage of McCausland*, 159 Wn.2d 607, 152 P.3d 1013 (2007)).

But under the majority's reasoning, a parent who has his children only 30 overnights per year can *receive* a substantial child support payment from the custodial parent if the latter earns substantially more than the former. Such a result is contrary to historical practice. *Id.*

Here, because both parents have equal overnights with their children, there is no custodial parent. In such a scenario, it is as equally random and erroneous to order the father to pay his presumptive payment to the mother as it would be to order the mother to pay her presumptive payment to the father. Yet the former is exactly what the lower court did.

This randomness is resolved by RCW 26.19.075(1)(d), which provides:

> The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving temporary assistance for needy families. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.

The legislature granted courts discretion on whether to allow a deviation and in determining the amount of the deviation. This discretion is necessary to accomplish the legislative purpose of equitably apportioning the child support obligation between the parents. RCW 26.19.001. Indeed, this purpose of equitable apportionment is achieved by adhering to the legislature's directive that courts consider the actual increase and decrease in expenses brought about by an obligor parent having a significant amount of residential time.

Some expenses are variable (e.g., food, transportation, and entertainment) and depend upon the degree of residential shifting; whereas some expenses are fixed (e.g., housing) and depend very little upon the degree of residential shifting. In turn for granting courts discretion to grant or deny deviations, the legislature tasked courts to make well-reasoned decisions. This task is accomplished by requiring courts to actually enter written findings of fact when any deviation is granted or denied.

Here, the legislative purpose of achieving a well-reasoned decision has been thwarted not once but twice: First, the written findings clearly are inadequate. The majority concedes this; second, the oral finding applies the wrong legal standard, not the standard set forth in RCW 26.19.075.

I, therefore, would reverse the lower court and remand for entry of appropriate findings using those considerations specifically set forth in RCW 26.19.075(1)(d).

Lawrence-Berrey, J.