No. 92117-2

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

In re the Marriage of

MICHAEL ST. GEORGE BENT,

Appellant,

v.

LASHANDRE NICHELE BENT,

Respondent.

REPLY TO ANSWER TO PETITION FOR REVIEW

Michael S. Bent
Appellant, pro se

1115 SE 164 Ave Suite 210-S33
Vancouver, WA 98683
Tel: 360.907.1860
Email: msgbent@gmail.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES

FEDERAL CASES

STATUTES AND CONSTITUTION PROVISIONS

A. IDENTITY OF PETITIONER

Michael Bent, petitioner pro se, replies to the respondent's answer to his Petition for Review because respondent has raised numerous new issues.

B. ISSUES PRESENTED BY RESPONDENT

1. Are "run-of-the-mill dissolution and relocation matter" cases of substantial public interest?
2. Does a systematic arrangement into groups for differentiated legal treatment, for example assigning descriptor labels such as "obligee" and "custodian," effect a "classification"?
3. Is dicta in an inapposite case, for example *In re Marriage of King* deciding the right to public counsel, binding precedent?
4. Will adherence to the US Constitution risks erosion of the Washington State statutory framework?
5. Is the presumption of constitutionality of economic statutes binding precedent for statutes affecting fundamental rights?
6. Does a Court's unsubstantiated opinion that arguments are "devoid of merit" and on which "no reasonable minds might differ" justify penalty of attorney fees?

C. STATEMENT OF THE CASE

The Petition for Review presents the unbiased facts of the case. It is not surprising LaShandre Bent (LaShandre*) appreciates the Appellate Court's favorable interpretation. She adds that Michael alone "imagines" her mental illness. Ans. at 3. However, she overlooks the unrefuted multiple very highly elevated scales resulting from her Minnesota Multiple Personality Index (MMPI) . Ex 2 at 22. Michael's original BA, presents detailed evidence showing the court appointed psychologist was restricted by court order from exploring this alarming finding and thereby, per his trial testimony, this finding could not be used in his relocation assessment.

D. ARGUMENT WHY ISSUES RAISED BY RESPONDENT ADD FURTHER JUSTIFICATION FOR REVIEW

1. Are "run-of-the-mill dissolution and relocation matter" cases of substantial public interest?

LaShandre asserts the Bent case is of "no substantial public interest" as it is simply a "run-of-the-mill dissolution and relocation matter". Ans.at 1. The logical error in suggesting "run-of-the-mill" cases, meaning common cases reflecting the experience of a large population, are of no public interest does not warrant discussion. Furthermore, it cannot be doubted that dissolution and relocation matters, matters that impact important aspects of the daily lives of a broad segment of society, will be of

* First name used for clarity.
No disrespect intended.

substantial public interest. So broad are the social issues that interest stretches throughout our state and across our nation. This Court has repeated observed strong public interest in dissolution and relocation cases so much so as to suggest relocation cases be treated with priority. *In re Custody of Osborne* (Footnote #8):

> "We recommend that counsel in future child relocation appeals utilize the procedures for requesting accelerated review that are provided by RAP 17.4 and RAP 18.12. ... policies favoring speedy resolution of disputes regarding child relocation at the trial court level justify utilizing the procedures that are available to obtain accelerated review on appeal." *In re Custody of Osborne*, 79 P. 3d 465 - Wash: Court of Appeals, 1st Div. 2003.

LaShandre further reassures this case involves an area of law where trial courts routinely make "highly discretionary decision" and it is virtually impossible for citizens to anticipate the outcome. Ans. at 1. The resulting distress and anxiety is palpable and heightens the public interest.

Unfortunately, the social harm of this excessive discretion is so common place as to be ignored or tolerated. Likewise, prejudicial court practices are so socially engrained as to be imperceptible and overlooked. On appeal, fearing the Court of Appeals (CoA) has become immune to routine equal rights violations in family courts, Michael acknowledged the Bent case might not appear unique as these prejudicial practices are commonly accepted. BA at 8. The measure however, is against the constitution and it requires considering a constitutionally valid dissolution

to reveal the manifest violations. While not her intention, LaShandre's assurance that this case is a "run-of-the-mill dissolution and relocation matter" gives further justification for this Court to grant review.

2. Does a systematic arrangement into groups for differentiated legal treatment, for example assigning descriptor labels such as "obligee" and "custodian," effect a "classification"?

To accept LaShandre's attitude and argument in favor of applying bias-laden designations would be to undo centuries of work by disenfranchised classes of citizens who fought to drive equality into all aspects of American life. The people of Washington State so strongly sought equality as to amend our state constitution. WA's Equal Rights Amendment brought pervasive social change and greater equality. It cannot be doubted that the people of Washington expects its representative government to equally respect and protect the rights of each person and to hold each person to the same standard under the law.

> "[T]he equal rights amendment ... firmly requires equal responsibilities as well. ... The mutuality of responsibility of both parties for their children has been made even more explicit by the adoption of the dissolution of marriage act, Laws of 1973." *Smith v. Smith,* 13 Wn. App. 381, 385, 534 P.2d 1033 (1975).

US Supreme Court cases are replete with judicial directives on the topic but sadly the CoA does not accept the high court's jurisprudence. The CoAs' ardent reluctance to adopt the US Constitution possibly stems

from remaining vestiges of patriarchal thinking that had likewise led this Court to hold that the constitution did not apply to Divorce Courts:

> "We are convinced, ... our constitution, simply was not designed to thwart or prevent a proper exercise of the equity power and discretion of our divorce courts." *Brantley v. Brantley,* 54 Wn.2d 717, 719, 344 P.2d 731 (1959).

It is of course senseless to assert the constitution, the governance agreement between the People and our government, would not apply in Courts where personal and intimate aspects of the Peoples' lives are adjudicated. Thankfully, the US Supreme Court has long since clarified that even equity courts are constrained by the constitution:

> "Courts of equity can no more disregard statutory and constitutional requirements and provisions than can courts of law." *INS v. Pangilinan,* 486 U.S. 875, 883, 108 S.Ct. 2210, 2216, 100 L.Ed.2d 882 (1988).

However, the ancient mentality is evident throughout CoA's opinion and the CoA even suggests Michael's rights are stipulated by the Legislature.

LaShandre mistakenly views the CoA as an authority on the topic and fails to appreciate the rigor necessary to clear equal rights restrictions. She misleadingly proclaims "Michael now [blindly] asserts that designating him the obligor parent and LaShandre the obligee violates the Equal Protection Clause." She adds boldly without citing any reference, "Nor does it violate the Equal Protection Clause to designate LaShandre a "custodian" for the sole purpose of complying with federal statutes." Ans.

at 7. Her misunderstanding reflects the current Family Court culture and her limited comprehension of the sometimes complex arena of equal protection. Though seemingly subtle, it is imperative to clarify that what makes the designations unconstitutional is the failure to demonstrate sufficient cause. Meaning, Michael had instead asserted: failure to demonstrate sufficient cause for designating him the obligor parent and LaShandre the obligee violates the Equal Protection Clause. As clarified in his Petition, with proper scrutiny and justification, the resulting infringement is not a violation or repugnant.

> "equal protection analysis requires strict scrutiny of a legislative classification ... when the classification ... interferes with the exercise of a fundamental right" *Mass. Bd. of Retirement v. Murgia,* 427 U.S. 307, 312 (1976).

Instead, the improperly incented County Trail Court failed to make any suitable and sufficient findings for its mindlessly, "rubber stamp" violation of Michael's rights. Its unjustified intrusive supervisory control dictating how Michael is to provide so LaShandre could do as she pleases may be appropriate when there is a showing of unfitness, but that did not render it acceptable, even if to satisfy a compelling State interest.

> "[T]he Constitution recognizes higher values than speed and efficiency. The State's interest in administrative ease and certainty cannot, in and of itself, save [a] conclusive presumption [of parental unfitness] from invalidity under the Due Process Clause ...." *Vlandis v. Kline,* 412 U.S. 441,450, 93 S.Ct. 2230, 37 L.Ed.2d 63 (1973).

> "[T]he government must demonstrate that alternative measures that burden substantially less [of a liberty interests] would fail to achieve the government's interests .... [Intrusive means are] easy to enforce, but the prime objective of the [Constitution] is not efficiency." *McCullen v. Coakley,* 573 U. S. ___, 134 S.Ct. 2518, 2540 (2014).

LaShandre of her own free will chose to not apply her advanced degree. Michael, had invested and sacrificed for her to secure her desired MBA. He received no benefit for his sacrifices and instead is now burdened to provide for her leisurely lifestyle yet she had 6 years during marriage to seek employment after acquiring a prestigious MBa.

> "[M]arriage is a shared enterprise, a joint undertaking ... in many ways it is akin to a partnership. ... Where a partner to marriage takes the benefits of his spouse's support ... and the marriage is then terminated without the supported spouse giving anything in return, an unfairness has occurred that calls for a remedy." *In re Marriage of Washburn,* 101 Wn.2d 168, 182, 677 P.2d 152 (1984).

Had she utilized her MBA starting 2007, by time of separation she could have accumulated over $300k, considering a median imputed income per RCW 26.19.071(6). RP 435. Instead she focused on planning and orchestrating the divorce. She made no effort to take personal financial responsibility to be able to provide for the children she sought custody of and now presents herself as victim. The fact that LaShandre now finds herself in need, does not make Michael responsible for her up-keep. Independence comes at a price.

> "In general it is not plain that a man's misfortunes or necessities will justify his shifting the damages to his neighbor's shoulders. ... So far as private persons ... have seen fit to take the risk ..., we cannot see that the fact that their risk has become a danger warrants the giving to them greater rights than they [secured]." *Pennsylvania Coal Co. v. Mahon,* 260 U.S. 393, 416 - 417, 43 S.Ct. 158, 67 L.Ed. 322 (1922).

> "A strong public desire to improve the public condition [will not] warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." *Pennsylvania Coal,* 260 U.S. at 416.

3. Is dicta in an inapposite case, for example In re Marriage of King deciding the right to public counsel, binding precedent?

It is apparent that LaShandre, like the CoA believes *In re Marriage of King* is an apposite dissolution case but in fact it is not even a per se dissolution case. That case only held that there is no right to appointed public counsel in dissolution proceeding where residential placement of children is at issue. LaShandre's reliance on dicta from this inapposite case (as did the CoA) is misplaced. The analysis in *In re Marriage of King* relates directly to the "fundamental parental liberty interest, recognized in termination proceedings." *In re Marriage of King*, 162 Wn.2d 378, 382, 174 P.3d 659 (2007).

That court was asked to decide if state protections offered in Dependency Hearings should be provided in a dissolution when one party is destitute. Here, neither party is seeking public counsel nor claims to be

destitute, therefore this case is not apposite. Michael had referenced dicta from *In re Marriage of King* to distinguish the fundamental parental liberty interest recognized in termination proceedings. This narrow but important perspective of parental rights he termed the legal Right of Parentage. The majority anchored their ruling based on this legal right. The passionate dissent by Chief Justice Madsen provided a useful contrast distinguish the-yet-more-precious fundamental rights parents' have to the care and custody of their children. Though the majority correctly noted that both parents retain substantial rights, there is far more to a dissolution than mere legal rights. As Chief Justice Madsen wisely added:

> "The fundamental interest at stake in this dissolution proceeding [is] a parent's fundamental interest in the day-to-day companionship, care, and charge of his or her children ... [and] the parent-child relationship, not just its bare existence." *King,* 162 Wash.2d at 672 (Madsen dissenting).

Parents, like Chief Justice Madsen, view these pragmatic interests as the real essence of Parental Rights. These treasured interests are highly important to Michael who reflects a growing trend among contemporary families ...

> "in the sharing of parenting responsibilities during marriage, and a strong desire on the part of [both] parents to continue sharing in those responsibilities after the marriage ends." *In re Marriage of Pape,* 139 Wash.2d 694, 708, 989 P.2d 1120 (1999).

The majority focused on the legal right to parentage, which by

analogy, was akin to a car title and assured Ms King she remains a legal owner; essential and certainly desired but not satisfying. The truly treasured aspects of Parental Rights, akin to possession and control of said car were casually parsed during the State controlled arbitration process and the Bent case was similarly onerous. Reliance on *In re Marriage of King* requires considering the context of the case and not drifting too far from its central holding. That case is inapposite and inapplicable to this Bent case in the manner used by LaShandre.

Conversely, an argument akin to Michael's may have been useful to Ms King in *In re Marriage of King.* From what case records are available, it appears Ms King's goal was simply to secure meaningful time with her children and had consumed what little funds she had in feeding the over-zealous legal machinery that manipulates family courts. Faced with what LaShandre describes as an "economically-advantaged" adversary, Ms King assumed she needed her own war chest and sought support of public counsel. Ans. at 10.

However, a far more useful perspective would have been to recognize that it was the favored bias towards the rights of her adversary over her own that caused the inequity. That favored bias was permitted and enforced by Trial Court overseeing her dissolution. However, regardless of the legal maneuvering from her adversary's well paid

counsel, it was the Trial Court's responsibility to protect her rights no less than it protected that of her adversary. Her right to the care and custody of her children was no less (or more) than her adversary's. Unless she was found unfit the Trial Court was not permitted to infringe. By default she was to have equal time with her children and needed no counsel to secure her rights – her rights were inalienable and We the People established our limited government to equally protect those rights.

The case records suggest, before she was bankrupted by the legal machinery, she adequately met this Court's criteria's established in the Lybbert case and was not declared unfit. In other words, in relation to their children, she and her adversary were similarly situated. Perhaps her adversary could provide a fancier house but this Court's and US Supreme Court's precedent clearly hold adequacy is the bar and, given Ms King's tenacity, it cannot be doubted she would have readily surpass her children's needs:

> "[C]ommonly understood general obligations of parenthood entail these minimum attributes: duty to supply the necessary food, clothing, and medical care [and] provide an adequate domicile". *In re Adoption of Lybbert,* 75 Wn.2d 671, 674, 453 P.2d 650 (1969)

It was the King's Trail Court that failed its constitutional directive to equally protect her precious rights. Likewise, Michael's rights were virtually extinguished without the faintest showing of unfitness.

4. Will adherence to the US Constitution risks erosion of the Washington State statutory framework?

LaShandre seemingly attempts to obfuscate. She first suggests Michael is overly demanding in expecting RCW 26.09.187 to be applied as it is stated and not rely on extrapolations from applying RCW 26.09.520. Ans. at 8. She also assures "the multi-factor tests in RCW 26.09.187 and 26.09.520 are plainly sufficient to ensure that children are placed with fit parents." Ans. at 9. Taken together this means there are existing statutes to guide the dissolution process and Michael is dogmatic about applying them. Correct, that of course is how a country of laws operates. However, she then in the same breath warns, exaggerating:

> "The "rules" Michael proposes would completely erode much of Washington's statutory framework and common law governing parenting plans, child support, modifications, relocations, and other matters, orders and pleadings related to children. This Court should deny review. Ans. at 7.

Michael primarily raises the issue that they are not being used. Granted, our state statutes are by no means perfect for example some statutes are deficient due to silence, like RCW 26.09.520 which lacks of clarity about its use during dissolution. Instead, encouraged by RCW 26.09.003, Trial Court's "highly discretionary decision on relocation and parenting" is assumed to govern. Ans. at 1. Similar to RCW 26.09.002, RCW 26.09.003 applies implicitly through-out RCW 26.09. RCW

26.09.003, in pertinent part states:

> "The legislature finds that there are certain components of the existing law which do not support the original legislative intent. ... Judicial officers should have the discretion and flexibility to assess each case based on the merits of the individual cases before them."

While RCW 26.09.003 is silent, the discretion afforded the County Trial Court is necessarily bounded by the constitution:

> "[J]udicial action is not immunized from the operation of the Fourteenth Amendment simply because it is taken pursuant to the state's common-law policy. ... And when the effect of that action is to deny rights subject to the protection of the Fourteenth Amendment, it is the obligation of [higher courts] to enforce the constitutional commands." *Shelley v. Kraemer,* 334 U.S. 1, 20, 68 S.Ct. 836, 92 L.Ed. 1161 (1948).

LaShandre's deduction that "In other words, Michael proposes that the dispositive factor in determining residential placement is who has more money" is absurd and mistaken. Ans. at 10. As discussed above relying on *In re Marriage of King*, Michael has repeatedly argued that fitness is the threshold. To clear this threshold each parent will need to assume responsibility to support their child(ren). How parents do so is up to them but each parent will need to independently earn a living to become what LaShandre describes as an "economically-advantaged" parent.

Oddly, her warning goes so far as to insinuate calamity will result simply from this Court granting review. Perhaps a sign of her confidence in Michael's argument. While calamity is not eminent, the "rules" she

fears are based on interpretation of our constitution by our highest courts, and as noted earlier, "the prime objective of the [constitution] is not efficiency." *McCullen*, 573 U.S. at 134 (2014). Ensuring the commands of the constitution are enforced in Trial Courts may require significant retraining for judges who have been indoctrinated in incorrect principles by organizations of financially-incented attorneys. Many will need to learn RCW as if for the first time. Such changes will not "completely erode much of Washington's statutory framework" but does challenge the status quo. Meaning, this will not be easy but it is imperative to uphold the spirit of our nation as the land of the free where equality is treasured.

> "[These "rules"] will undoubtedly lessen to some extent the freedom and flexibility of [the County Trial Court]. But such consequences necessarily flow from any decision upholding a claim of constitutional right; many of the provisions of the Constitution are designed to limit the flexibility and freedom of governmental authorities." *First English Evangelical Lutheran Church v. County of Los Angeles,* 482 U.S. 304, 321, 107 S.Ct. 2378, 96 L.Ed.2d 250 (1987).

5. Is the presumption of constitutionality of economic statutes binding precedent for statutes affecting fundamental rights?

LaShandre is correct that the CoA cited "three of this Court's opinions holding that statutes are presumed constitutional." However, none are on point as none implicated fundamental rights. As LaShandre highlights in her Answer, one considered the former Washington State Liquor Control Board's spirit licensing fee structure; another argued that

suspending commercial driver's license for failing to pay child support violated procedural and substantive due process; and the last challenged the constitutionality of statute governing child support collection services. Ans. at 11. While these are important areas of law impacting society, courts readily acknowledge they are no better equipped to develop suitable law where the constitution is not dispositive and have therefore granted the legislature flexibility to balance the often conflicting needs in the world of commerce and finance.

Applying Eldridge's due process analysis to the CoA's presumption of constitutionality readily demonstrates that when fundamental rights are impacted, the risk of erroneous deprivation is excessive. This analysis shows the presumption of constitutionality is invalid in said cases. (Argument developed BA p 10-13). Not surprisingly, numerous US Supreme Court opinions hold the presumption to be invalid in such cases and this Court had previous opined likewise. (Citation in BA at 11 & 30 and Pet. at 20.)

6. Does a Court's unsubstantiated opinion that arguments are "devoid of merit" and on which "no reasonable minds might differ" justify penalty of attorney fees?

LaShandre characterizes Michael's Petition as "frivolous" citing the CoA's opinion of his appeal. In her view, applying the CoA's unsubstantiated assessment, his Petition is "devoid of merit" and poses

arguments on which "no reasonable minds might differ" given he challenges "well-settled areas of law". If this were a valid basis for American Courts to squelch pursuit of liberty, social progress would have long been stifled. On such basis *Browder v. Gayle,* 142 F.Supp. 707 (M.D. Ala. 1956), aff'd, 352 U.S. 903, 77 S.Ct. 145, 1 L.Ed.2d 114 (1956), would have been ignored as "frivolous" as it challenged well-settled law that African Americans were only permitted to sit in the back of Montgomery's public buses. Similarly "frivolous" and worthy of penalty was *Brown v. Board of Education,* 347 U.S. 483, 495, 74 S.Ct. 686, 692, 98 L.Ed. 873 (1954), that challenged well-settled law enforcing racially segregated schools. Undoubtedly, those petitions for equal justice under the law would, given the existing dominant social norms, be considered "devoid of merit" and pose arguments on which "no reasonable minds might differ." Surely something more than essentially saying "we don't agree" and "that's not how we do things" is needed to warrant a penalty.

She fails to realize Courts are required to take a decidedly different perspective as commanded by Washington State Constitution Article IV. The Judiciary, and only the Judiciary, is required by State Constitution to "take and subscribe an oath that he will support the Constitution of the United States." Our Constitution goes further in Article XXVII, commanding that only (well-settled) laws "... which are not repugnant to

this Constitution, shall remain in force ..." To further leave no question Article I proclaims "The Constitution of the United States is the supreme law of the land." Legislative laws and court practices, "well-settled" or otherwise, are not supreme and must adapt to changing circumstances else become outdated and repugnant to our Constitution.

> "In constitutional adjudication as elsewhere in life, changed circumstances may impose new obligations, and the thoughtful part of the Nation could accept each decision to overrule a prior case as a response to the Court's constitutional duty. ... From the obligation of this promise this Court cannot and should not assume any exemption when duty requires it to decide a case in conformance with the Constitution." *Planned Parenthood of Southeastern Pennsylvania v. Casey,* 505 U.S. 833, 864-866, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992).

The American People in establishing our limited government, ensured the People's right to appeal was preserved, and here there is no compelling state interest to justify infringing this right by attempting to chill Michael's search for justice.

> "If a provision [is] to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it would be patently unconstitutional." *United States v. Jackson,* 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed.2d 128 (1968)
>
> "[T]he burden is on the government to establish that an impairment of a constitutionally protected right is necessary to serve a compelling state interest...." *City of Bellevue v. Lorang*, 140 Wash.2d 19, 30, 992 P.2d 496 (2000)

It goes without saying that Michael objects to the characterization of "frivolous." However, a direct challenge of the

CoA's characterization would have placed the "cart before the horse". Instead, by seeking review of his arguments in this Court or, if needed the highest court, he expect to show his arguments are not "devoid of merit". Relying on constitutional arguments with extensive and relevant references to US Supreme Court opinions, Michael's BA & RBA shows the decree to be unconstitutional. Sadly, the opinions the CoA considered "devoid of merit" were mostly those of our highest court adapted from applicable cases. This Court is requests to decide for itself the merits of Michael's arguments used in his pleadings.

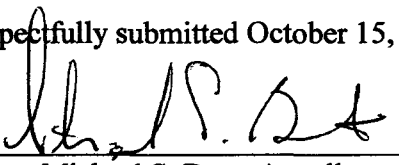
> "Standard of Review. Constitutional challenges are reviewed de novo." *Fusato v. Washington Interscholastic Activities Ass'n,* 93 Wash.App. 762, 767, 970 P.2d 774 (1999).

Perplexingly, though LaShandre is confident in the CoA's characterization, she undertook the unnecessary expense to submit an unrequired answer (per RAP 13.4(d)). Surely this court would readily dismiss a frivolous Petition without need for her Answer. This Court should deny her request for attorney fees for an unnecessary Answer. Such a penalty could only be to chill Michael's assertion of his constitutional rights and be an unconstitutional taking (argument developed in RBA p 20-24).

E. CONCLUSION

This Court should accept review to properly consider Michael's arguments and his requested relief.

Respectfully submitted October 15, 2015.



Michael S. Bent, Appellant, pro se
1115 SE 164 Ave Suite 210-S33
Vancouver, WA 98683
Tel: 360.907.1860 • Email: msgbent@gmail.com

APPENDIX A

26.09.002
Policy.

Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests. Residential time and financial support are equally important components of parenting arrangements. The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.

[2007 c 496 § 101; 1987 c 460 § 2.]

Notes:

Part headings not law -- 2007 c 496: "Part headings used in this act are not any part of the law." [2007 c 496 § 801.]

26.09.003
Policy — Intent — Findings.

The legislature reaffirms the intent of the current law as expressed in RCW **26.09.002**. However, after review, the legislature finds that there are certain components of the existing law which do not support the original legislative intent. In order to better implement the existing legislative intent the legislature finds that incentives for parties to reduce family conflict and additional alternative dispute resolution options can assist in reducing the number of contested trials. Furthermore, the legislature finds that the identification of domestic violence as defined in RCW **26.50.010** and the treatment needs of the parties to dissolutions are necessary to improve outcomes for children. When judicial officers have the discretion to tailor individualized resolutions, the legislative intent expressed in RCW **26.09.002** can more readily be achieved. Judicial officers should have the discretion and flexibility to assess each case based on the merits of the individual cases before them.

[2007 c 496 § 102.]

Notes:

Part headings not law -- 2007 c 496: See note following RCW **26.09.002**.

26.19.071
Standards for determination of income.

(1) **Consideration of all income.** All income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent. Only the income of the parents of the children whose support is at issue shall be calculated for purposes of calculating the basic support obligation. Income and resources of any other person shall not be included in calculating the basic support obligation.

(2) **Verification of income.** Tax returns for the preceding two years and current paystubs shall be provided to verify income and deductions. Other sufficient verification shall be required for income and deductions which do not appear on tax returns or paystubs.

(3) **Income sources included in gross monthly income.** Except as specifically excluded in subsection (4) of this section, monthly gross income shall include income from any source, including:

(a) Salaries;

(b) Wages;

(c) Commissions;

(d) Deferred compensation;

(e) Overtime, except as excluded for income in subsection (4)(i) of this section;

(f) Contract-related benefits;

(g) Income from second jobs, except as excluded for income in subsection (4)(i) of this section;

(h) Dividends;

(i) Interest;

(j) Trust income;

(k) Severance pay;

(l) Annuities;

(m) Capital gains;

(n) Pension retirement benefits;

(o) Workers' compensation;

(p) Unemployment benefits;

(q) Maintenance actually received;

(r) Bonuses;

(s) Social security benefits;

(t) Disability insurance benefits; and

(u) Income from self-employment, rent, royalties, contracts, proprietorship of a business, or joint ownership of a partnership or closely held corporation.

(4) **Income sources excluded from gross monthly income.** The following income and resources shall be disclosed but shall not be included in gross income:

(a) Income of a new spouse or new domestic partner or income of other adults in the household;

(b) Child support received from other relationships;

(c) Gifts and prizes;

(d) Temporary assistance for needy families;

(e) Supplemental security income;

(f) Aged, blind, or disabled assistance benefits;

(g) Pregnant women assistance benefits;

(h) Food stamps; and

(i) Overtime or income from second jobs beyond forty hours per week averaged over a twelve-month period worked to provide for a current family's needs, to retire past relationship debts, or to retire child support debt, when the court finds the income will cease when the party has paid off his or her debts.

Receipt of income and resources from temporary assistance for needy families, supplemental security income, aged, blind, or disabled assistance benefits, and food stamps shall not be a reason to deviate from the standard calculation.

(5) **Determination of net income.** The following expenses shall be disclosed and deducted from gross monthly income to calculate net monthly income:

(a) Federal and state income taxes;

(b) Federal insurance contributions act deductions;

(c) Mandatory pension plan payments;

(d) Mandatory union or professional dues;

(e) State industrial insurance premiums;

(f) Court-ordered maintenance to the extent actually paid;

(g) Up to five thousand dollars per year in voluntary retirement contributions actually made if the contributions show a pattern of contributions during the one-year period preceding the action establishing the child support order unless there is a determination that the contributions were made for the purpose of reducing child support; and

(h) Normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about which there is disagreement.

Items deducted from gross income under this subsection shall not be a reason to deviate from the standard calculation.

(6) **Imputation of income.** The court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed based upon that parent's work history, education, health, and age, or any other relevant factors. A court shall not impute income to a parent who is gainfully employed on a full-time basis, unless the court finds that the parent is voluntarily underemployed and finds that the parent is purposely underemployed to reduce the parent's child support obligation. Income shall not be imputed for an unemployable parent. Income shall not be imputed to a parent to the extent the parent is unemployed or significantly underemployed due to the parent's efforts to comply with court-ordered reunification efforts under chapter **13.34** RCW or under a voluntary placement agreement with an agency supervising the child. In the absence of records of a parent's actual earnings, the court shall impute a parent's income in the following order of priority:

(a) Full-time earnings at the current rate of pay;

(b) Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data;

(c) Full-time earnings at a past rate of pay where information is incomplete or sporadic;

(d) Full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, is recently coming off public assistance, aged, blind, or disabled assistance benefits, pregnant women assistance benefits, essential needs and housing support, supplemental security income, or disability, has recently been released from incarceration, or is a high school student;

(e) Median net monthly income of year-round full-time workers as derived from the United States bureau of census, current population reports, or such replacement report as published by the bureau of census.

[2011 1st sp.s. c 36 § 14; 2010 1st sp.s. c 8 § 14; 2009 c 84 § 3; 2008 c 6 § 1038; 1997 c 59 § 4; 1993 c 358 § 4; 1991 sp.s. c 28 § 5.]

Notes:

Findings -- Intent -- 2011 1st sp.s. c 36: See RCW **74.62.005**.

Effective date -- 2011 1st sp.s. c 36: See note following RCW **74.62.005**.

Findings -- Intent -- Short title -- Effective date -- 2010 1st sp.s. c 8: See notes following RCW **74.04.225**.

Effective date -- 2009 c 84: See note following RCW **26.19.020**.

Part headings not law -- Severability -- 2008 c 6: See RCW **26.60.900** and **26.60.901**.

Severability -- Effective date -- Captions not law -- 1991 sp.s. c 28: See notes following RCW **26.09.100**.

DECLARATION OF SERVICE

I certify that on the date listed below, I served by method noted, one copy of the REPLY TO ANSWER TO PETITION FOR REVIEW on the following:

Shelby Frost Lemmel, WSBA 33099
Appellate Attorney for Respondent LaShandre Bent
241 Madison Ave. North
Bainbridge Island, WA 98110

_____ Hand delivery

__X__ U.S. Mail

Teresa Foster, WSBA #33463
108 East Mill Plain Blvd
Vancouver, Washington 98660

_____ Hand delivery

__X__ U.S. Mail

Signed October 15, 2015

Michael Bent, Appellant, pro se

Michael Bent
1115 SE 164 Ave Suite 210-S33 • Vancouver • WA • 98683
Tel: 360.907.1860 • Email: msgbent@gmail.com