73119-0

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COURT OF APPEALS NO. 73119-0-I

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

SHEILA KOHLS,

Appellant,

and

KENNETH B. KAPLAN,

Respondent.

OPENING BRIEF OF APPELLANT

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for depreciation for equipment and furniture, and $7,999 for insurance, when there was no independent documentation for such expenditures and/or proof that such expenditures reduced Kaplan's personal income? (Assignment of Error 1).

2. Did the court abuse its discretion in concluding there had not been a substantial change of circumstances to warrant modification when Kaplan's *net* monthly income increased from $8,137 in 2010 to $31,713.72, or more, in 2013, barely two and a half years later? (Assignment of Error 2).

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12. Are motions for revision governed by KCLR 7(b)(8), or by KCLR 7(b)(4)? (Assignment of Error 13).

13. Did Kohls' attorney violate the court's "admonishment" by responding to statements in the Petitioner's Motion to Strike concerning the amount of Commissioner Jeske's CR 11 sanctions and the reasons she entered them? (Assignments of Error 13).

14. Did the court abuse its discretion by failing to award Kohls her reasonable attorney fees based upon (1) the factual and legal questions involved; (2) the time necessary for preparation and presentation of the case; and (3) the amount and character of the property involved, and then appraising these factors in light of the equities ... and the considerations of RCW 26.09.140? (Assignment of Error 15).

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16. Did the court abuse its discretion by failing to award Kohls her reasonable attorney fees by disregarding the legal services Kohls' attorney rendered *other* than legal research and briefing, reviewing financial records, and deposition preparation and attendance? (Assignments of Error 15 and 16).

17. Did the court abuse its discretion by failing to indicate at least approximately how the court arrived at its award, and explain why discounts were applied? (Assignments of Error 15 and 16).

18. Did the court abuse its discretion by failing to compare the hours and rates charged by opposing counsel to determine the reasonableness of Kohls' request? (Assignments of Error 15 and 16).

Statement of the Case.

This appeal arises from a proceeding to modify child support. Kenneth Kaplan and Sheila Kohls[1] were divorced on March 22, 2005. CP 14-18. They have two children: Zachary and Idalia. Kaplan was an attorney. Kohls was a stay-at-home mom.

[1] For ease of consideration, the parties shall be identified by their last names. No disrespect is intended.

When the Court entered its Final Order of Child Support, Kaplan had a gross monthly income of $29,370. He was ordered to pay maintenance of $9,000 per month, which reduced his net monthly income to $15,026.13. CP 8, 269.

Kaplan was ordered to make a transfer payment of $1,534 per month, which deviated *upward* from the standard calculation of $1,029 per month due to "living standard of family". CP 3. Kaplan was ordered to pay 100% of the children's private school tuition, so long as those funds continued to be provided by his father. CP 5.

2010 Child Support Modification. The Order of Child Support was modified in 2010. CP 220-234.

Kohls had returned to work as an elementary school nurse and no longer received maintenance. CP 269. Kaplan had stopped practicing law. His income was derived from his wholly owned Kaplan Real Estate Services, LLC ("KRES"), which invests in and manages apartment buildings. CP 269-270.

In his first Financial Declaration, Kaplan declared that his monthly net income was $3,079, and that his monthly expenses were $12,346. CP 69-74.

Using his 2009 income tax return, the King County Family

Support Division calculated Kaplan's gross monthly income to be $21,875. CP 270.

Shortly before trial, Kaplan declared that he would have a "negative adjusted gross income of just over $15,000 in 2010", CP 95, 271. He submitted an "updated" Financial Declaration, in which he imputed a gross monthly income to himself of $4,746, with a monthly net of $3,633.41, and increased his monthly expenses to $13,524. CP 88-93.

Based on this conflicting information, the court found that it was appropriate to impute income to Kaplan in the net amount of $8,137 each month, CP 221:

> The court finds that the father is voluntarily un/underemployed for the purpose of avoiding his child support obligation.

It found that Kohls' net monthly income was $2,444. CP 222.

The court reduced the standard calculation transfer payment to Kohls of $1,928 per month to $1,500 because of its order that Kaplan continue "to pay the full school tuition cost for both children (currently attending University Prep in Seattle at an annual cost, per the father, of $52,000)." CP 223, 271. The court also found that the children's health insurance cost Kaplan $450 per month, and

reduced his transfer payment to Kohls for her proportionate share of that premium. CP 225, 231, 272.

The Present Proceeding. When Zachary graduated from University Prep, Kohls commenced the present proceeding by filing a Petition for Modification of Child Support *pro se*. CP 209-234. Idalia was a sophomore at University Prep. CP 269.

The children's post-secondary support for college tuition, and room and board, is funded through a trust established by their paternal grandparents, CP 269, but their expenses when they are not attending college during the summer months are not.

In his Response to Kohls' Petition, Kaplan represented that "his income has *decreased* by approximately $1,024 per month since the last Order of Child Support was entered," CP 248, to a net monthly income of $7,112.74. CP 250, CP 241.

Following a trial by affidavit, the Honorable Jacqueline Jeske, Family Law Court Commissioner, imputed a *net* income to Kaplan of $31,713.72 per month. She found that Kohls had a net monthly income of $2,334.55, but refused to permit her to deduct her pension contributions. CP 1493, 1500.

Both parties moved to revise her final orders. CP 1231-

1262, 1355-1368; 1547-1548.

On revision, the Honorable Sean O'Donnell found that Commissioner Jeske "correctly concluded that Mr. Kaplan's net monthly income was $31,713.72". CP 1796. He also ruled that Kohls could deduct her pension contributions, which reduced her net monthly income to $1,812.53. CP 1842.

Yet, in his Order On Revision, he found that there had not been a substantial change of circumstances and that the 2010 Order of Child Support did not create a severe economic hardship which was uncontemplated when that Order was entered.

However, the court ruled that it would treat Kohls' *pro se* Petition for Modification as a motion to adjust, primarily to insure that Idalia would receive "the appropriate amount of support due her given Mr. Kaplan's change of income." CP 1693-1698.

The court then arbitrarily determined which issues on the parties' cross-motions for revision, it would or would not address and concluded by ruling, CP 1702:

> Given the Court's finding that this matter is properly considered as an adjustment rather than modification, Ms. Kohl and Mr. Kaplan's respective motions to revise other aspects of the Commissioner's ruling is DENIED.

The court then directed Kaplan to prepare the final orders. CP 1702. Kaplan used that opportunity to include items which had not been identified as errors in his motion for revision, as required by KCLR 7(b)(8)(A), or had been denied at the revision hearing.

Over Kohls' objections, CP 1827-1833, the court entered its Order re Adjustment of Child Support and its Adjusted Order of Child Support on Revision, and included and/or excluded many of these same items Kaplan first raised in his presentation of these orders, CP 1839-1856.

This appeal followed.

Additional facts will be presented as they become relevant to the issues and the argument which follow.

Argument.

A. Standard of Review

In a modification proceeding, a trial court is required to set forth written findings of fact, which must be supported by substantial evidence and justify the court's conclusion. *State ex rel. Stout v. Stout,* 89 Wash.App. 118, 124, 948 P.2d 851(1997).

A modification of child support is reviewed for an abuse of discretion. *McCausland v. McCausland*, 159 Wash.2d 607, 616,

152 P.3d 1013 (2007). A court abuses its discretion if its decision is based on an erroneous view of the law, *In re Marriage of Scanlon and Witrak*, 109 Wn. App. 167, 174-175, 34 P.3d 877 (2001), or rests unreasonable or untenable grounds, *McCausland, supra.*

B. The Court Abused Its Discretion In Calculating Kaplan's Income.

1. The Court Abused Its Discretion By Permitting Kaplan To Deduct $10,397 For Depreciation For Undocumented Expenditures For Equipment And Furniture.

In calculating Kaplan's net income, the court abused its discretion by deducting $10,397 in depreciation for undocumented expenditures for equipment and furniture purportedly made by certain LLCs in which KRES,LLC held an ownership interest, CP 1345-1346, which did not reduce Kaplan's personal income.

In *In re Marriage of Stenshoel*, 72 Wn. App. 800, 806, 86 P.3d 635 (1993), the Court held:

> [D]epreciation and depletion expenses should be deducted from gross income *only* where they reflect an actual reduction in the personal income of the party claiming the deductions, such as where, *e.g.,* he or she actually expends funds to replace worn equipment or purchase new reserves.

RCW 26.19.071(5)(h) requires that :

> Justification shall be required for any business expense deduction about which there is disagreement.

In *Marriage of Gainey*, 89 Wn.App. 269, 274-275, 948 P.2d 865 (1997), *reversed on other grounds, In re Marriage of Moody,* 137 Wash.2d 979, 93, 976 P.2d 1240 (1999), this Court held:

> In general, one asserting a fact has the burden of proving it. Thus, one asserting that his or her income has decreased *must produce properly verified evidence* sufficient to support the desired finding. Similarly, one claiming that he or she has incurred business expenses and unpaid taxes must produce evidence sufficient to support the desired finding.

Documentary evidence is required to verify these expenditures or this depreciation. *In re Marriage of Bucklin,* 70 Wn. App. 837, 841, 855 P.2d 1197(1993). Yet, the only evidence of this depreciation and these expenditures was in a table attached to the declaration of Marianne Pangallo, the CPA for Kaplan and KRES, LLC, which showed that, apart from a "home office" expenditure, these expenditures were made by other LLCs managed and owned in part by KRES, LLC, CP 804, in the context of her contention that Kaplan should be permitted to deduct

principal payments made by these LLCs on their underlying mortgages, CP 798-799, 803---an argument the court correctly rejected. CP 1345. No evidence was presented as to who made the purported "home office" expenditure.

Nor was there even an allegation that these expenditures or this depreciation actually reduced Kaplan's personal income. In particular, there was no evidence that Kaplan used his personal income "to replace worn equipment or purchase new reserves". Since these undocumented expenditures made by KRES, LLC, or the LLCs in which KRES, LLC held an ownership interest, did **not** reduce Kaplan's *personal* income, it was an abuse of discretion to deduct these expenditures from his personal income to calculate his child support obligation. *In re Marriage of Stenshoel*, *supra.*

Disallowing this deduction of $10,397 for these undocumented expenditures or this depreciation which did not actually reduce Kaplan's personal income, increases his actual net income by an additional $911.42 per month.

2. The Lower Court Abused Its Discretion By Permitting Kaplan To Deduct Insurance Costs Allegedly Paid By KRESS, LLC.

KRES, LLC deducted $7,999 for insurance (other than

health) on line 15 of Schedule C of Kaplan's tax return. CP 2030.

According to Ms. Pangallo, this deduction is comprised of $2,921 in professional liability insurance, $2,813 in general liability, and $2,665 for Key Man insurance. CP 795.

Once again, there was **no** independent documentary evidence to verify these expenditures, apart from this reference in Kaplan's tax return. *In re Marriage of Bucklin, supra.* No insurance policies were produced. Nor was there any documentary evidence that Kaplan or KRES, LLC actually ever paid these premiums --- much less, proof that such payments actually reduced Kaplan's personal income, as required by *In re Marriage of Stenshoel*, *supra*.

In the absence of such evidence, this deduction should not have been allowed. *Marriage of Gainey*, *supra.*

In addition, Key Man insurance is not deductible for a single member of an LLC because Kaplan cannot be a direct or indirect beneficiary of such a policy, IRC Code Section 264(a)(1), and he claimed that his children were the beneficiaries. CP 1331.

Likewise, no professional liability policy was ever provided or introduced into evidence. In its 2010 Order of Child Support, the court found, CP 221:

> The father reported in a declaration signed on December 3, 2010, that he resigned from the Washington State Bar Association on November 17, 2009 and discontinued his malpractice insurance.

Disallowing these expenditures, which did not actually reduce Kaplan's personal income, increases his actual net income by an additional $666.58 per month.

In sum, when both the alleged depreciation for undocumented expenditures for furniture and equipment and these purported expenditures for insurance are disallowed, Kaplan's actual net monthly income should be imputed to be $33,291.72.

C. The Court Abused Its Discretion By Concluding There Had Not Been A Substantial Change of Circumstances.

Contrary to the conclusion of the court commissioner, CP 1207, the court concluded there had been no substantial change of circumstances warranting a modification of support. CP 1693-1698.

Initially, the court concluded there had been no substantial change of circumstances based on its mistaken belief that "Commissioner Jeske found that Kaplan's current *gross* monthly income is $32,129.72", and finding "the disparity between Kaplan's and Kohls' earnings has remained constant and was predicted to

do so at the time the 2010 order was entered." CP 1698.

Yet, even after the court recognized Commissioner Jeske "correctly concluded that Mr. Kaplan's net monthly income was $31,713.72", CP 1796, it refused to conclude that this near quadrupling of Kaplan's *net* monthly income in only two and a half years constituted a substantial change of circumstances. CP1796.

This was error and an abuse of discretion.

In *In re Marriage of Scanlon and Witrak*, 109 Wash. App. 167, 173-174, 34 P.3d 877 (2001), this Court held:

> ...that the mere passage of time and routine changes in incomes do not constitute a substantial change in circumstances. But some changes in incomes are such that they will not have been contemplated by the parties at the time the previous order of child support was entered and thus a change in incomes could constitute a substantial change of circumstances.

Whether a change in circumstances is substantial depends on its effect on a parent's monthly net income. *In re Marriage of Bucklin,* 70 Wn. App. at 840. The quadrupling of Kaplan's net monthly income in a mere two and a half years from $8,137 in December of 2010 to $31,713.72, or more, in June of 2013 is not a "routine change in incomes", and certainly was not contemplated

when the Order of Child Support was entered in 2010.

If, as the court found, the disparity between Kaplan's and Kohl's income was "predicted to [remain constant] at the time the 2010 order was entered," it did not do so. Kaplan's net monthly income nearly quadrupled. Kohls net monthly income decreased from $2,444 in 2010 to $1,812.53, CP 1842.

It thus constitutes a substantial change of circumstances warranting modification. *Marriage of Scanlon and Witrak*, *supra*.

D. The Court Abused Its Discretion By Finding That The 2010 Order of Child Support Did Not Work A Severe Economic Hardship On Kohls Because Her Economic Situation Was Contemplated At The Time The 2010 Order Was Entered.

In her Petition for Modification, Kohls alleged that an additional reason for modifying support was (CP 212):

> The previous order works a severe economic hardship; the Mother receives a reduced transfer payment resulting in insufficient funds to meet the needs of the children.

The court denied Kohls' claim that the 2010 Order of Child Support worked a "severe economic hardship", finding (CP 1696):

> With respect to the current order working a "severe economic hardship", Ms. Kohl provides limited information on this topic. Her overall expenses have actually decreased since the

> 2010 order. She alleges that because her son has moved out of the house and support payments for him have stopped, her economic situation is bleak. But that surely was contemplated at the time the 2010 order was entered. [emphasis added].

The lower court further found (CP 1697):

> Here, Ms. Kohls points to the disparity in her income versus her monthly expenses. But these circumstances were more acute in 2010 than it is in 2014. [emphasis added].

This was an erroneous view of the law, and hence an abuse of the court's discretion. RCW 26.09.170(4) provides in part:

> An order of child support may be modified one year or more after it has been entered without showing a substantial change of circumstances:
>
> (a) If the order in practice works a severe economic hardship on either party or the child{.}

See also, *In re Marriage of Sievers*, 78 Wn. App. 287, 304, 897 P.2d 388 (1995). The present 2010 Order of Child Support works a severe economic hardship on Kohls and the parties' daughter, Idalia. Kohls' net monthly income is only $1,812.53. CP 1842. Her monthly expenses are $5,356. CP 235.

Her child support payments helped her bridge this gap. However, when Kaplan stopped paying his monthly transfer

payment of $750 for Zachary after he graduated from University Prep, Kohls' present financial situation became even more difficult. Her net monthly income is not sufficient to meet the necessary monthly expenses for her and her daughter. CP 857, 235.

By the hearing on the Trial By Affidavit, Kohls' checking account was down to $1,217.75. She had only $718.04 in her savings account. Her credit card debt had increased to approximately $5,000. She had a car which was involved in an accident she could not afford to repair. She could not afford to replace a broken furnace. CP 857.

Idalia's support of $750 in the 2010 Order is less support than what Kohls received for her when she was 7 years old.

The fact that this severe economic hardship on Kohls and Idalia may have been foreseeable when the 2010 Order was entered is irrelevant. RCW 26.09.170(4)(a).

E. The Court Abused Its Discretion By Refusing To Address Whether Support Should Be Set Above The Maximum Advisory Level.

In her Petition for Modification, Kohls requested that support be set above the maximum advisory level. CP 213; RCW 26.19.065(3). The court abused its discretion by refusing to even

address her request. In *Marriage of Leslie,* 90 Wn. App. 796, 804, 954 P.2d 330 (1988), this Court held:

> Thus, we hold that, once faced with determining a child support obligation for parents whose combined net monthly income exceeds the statutory economic table, a trial court is not limited to the maximum amount of support provided by the schedule. It is permitted to "exceed" this amount upon written findings. *See* RCW 26.19.020. And consistent with legislative intent, the trial court **must** consider what additional amounts should be paid "commensurate with the parents' income, resources, and standard of living," in light of the totality of the financial circumstances. S*ee* RCW 26.19.001. (emphasis added).

Exceeding the maximum advisory level in such a case is not a "deviation". *Id.* The Court's ability to set support in excess of the maximum advisory level is particularly important where there is a great disparity between the parents' incomes. In *In re Marriage of Scanlon and Witrak,* 109 Wn. App. at 179, this Court held:

> Generally, when an obligor parent is ordered to pay an amount of support that exceeds the economic table, that parent enjoys substantial wealth in contrast to the obligee parent who lives in comparatively modest circumstances. In those cases, it is appropriate for a court, in *considering the standards of living of both parents, to attempt to lessen the disparity between the standard of living of the child and the wealthy parent.*(emphasis added).

Idalia resides with her mother at least 78% of the time. The disparity in standard of living between the two households is substantial. CP 857. With income at this level, the issue is not what is necessary to provide for the child's necessities, but rather how much additional support should be ordered based on the parents' income, resources, and standard of living, in light of the totality of the financial circumstances. *In re Marriage of Krieger and Walker*, 147 Wn.App. 952, 965-968, 199 P.3d 450 (2008).

The court below abused its discretion by refusing to even address the issue of whether support should be set above the maximum advisory level. Given the disparity in the parties' financial resources, this Court should hold that support should be set above the maximum advisory level.

F. The Court Abused Its Discretion By Believing It Was Compelled To Give Kaplan A Deviation For Paying The Private School Tuition For Idalia.

In the 2010 Order of Child Support, Kaplan was granted a deviation from the standard transfer payment because he paid the tuition for both Zachary and Idalia at University Prep. CP 223, 271.

Deviation from the standard support obligation remains the exception to the rule and should be used only where it would be

inequitable not to do so. *Goodell v. Goodell*, 130 Wash. App. 381, 391, 122 P.3d 929 (2005). In this case, it would be inequitable to grant Kaplan such a deviation.

Kaplan has repeatedly indicated throughout these proceedings that he is "willing to pay the entire cost" of private school for the parties' children. CP 929, 931. In addition, as Commissioner Jeske found when she ordered Kaplan to continue paying 100% of the educational costs for Idalia at University Prep. without a deviation, (CP 1494):

> The child support amount ordered in paragraph 3.5 does not deviate from the standard calculation, except with respect to the payment of tuition, and school required associated educational expenses, by father for Idalia at University Prep., based upon father's wealth and other economic resources; his historical obligation and past payment to pay for those expenses, as reflected in the prior Orders of Child Support; the fact that he now only has to pay those expenses for one instead of both children; the mother has no ability to bear those costs; and because it is in Idalia's best interests that she continue to attend University Prep.

In his motion for revision, Kaplan claimed that this ruling was error. CP 1358. The court denied Kaplan's request to revise this ruling. CP 1702. Yet, when he presented proposed final orders, he gave himself this deviation. Over Kohls' objections, CP 1824, the

court included it, because it erroneously believed it was bound by the 2010 Order of Child Support to give a deviation (CP 1843) :

> Per the Order of Child Support entered herein on December 17, 2010, the father was required to pay 100% of both children's tuition at University Prep and accordingly was granted a 22.2% downward deviation from the standard transfer payment. (The standard calculation of $1,928 for two children was reduced to $1,500, a difference of $428 or 22%). As the law of the case, this 22.2% downward deviation is required to be applied to the present standard calculation of for one child. ($1,738.05 X 22.2% = $386; $1,738.05 - $386 = $1,352).

The law of the case doctrine stands for the proposition that an appellate holding enunciating a principle of law will be followed in subsequent stages of the same litigation. *Roberson v. Perez*, 156 Wash.2d 33, 41, 123 P.3d 844 (2005). The law of the case doctrine is not applicable here because the 2010 Order of Child Support is not an appellate court ruling enunciating a principle of law.

Similarly, principals of collateral estoppel or res judicata have no application in cases involving support of children. *Matter of Marriage of Studebaker*, 36 Wash. App. 815, 817-818, 677 P.2d 789 (1984). In addition, the court's finding (CP 1843) that:

> A transfer payment of $1,352 per month, along with a payment of 100% of the child's private

school tuition, provides for the child's needs

is not supported by substantial evidence. The undisputed evidence is that the mother's income is insufficient to meet the monthly expenses for herself and her daughter. CP 1842, CP 235.

The court below abused its discretion by granting Kaplan a deviation based on an erroneous view of the law and facts. *In re Marriage of Scanlon and Witrak*, 109 Wn.App. at 174-175.

G. The Court Abused Its Discretion By Refusing To Order Kaplan To Reimburse Kohls For Overpaying Her Share Of Healthcare Insurance Premiums Not Actually Incurred.

In her Petition for Modification, Kohls sought reimbursement for overpaying her share of the actual cost of the children's health insurance premiums which were not actually incurred, in the amount of $1,071.94. CP 213; See also, CP 3379-3383.

In the 2010 Order of Child Support, the court found that the healthcare insurance which Kaplan was providing for the parties' children cost $430 per month. CP 96, 225, 231, 271-272.

However, the actual cost for the monthly premium for November and December 2011 was $180 per month for both children, a difference of $250 per month for two months, of which

Kohls' share was 23% or $138.60.

From January 1, 2012 to July 31, 2012, it cost $196 per month to insure both children, a difference of $234 per month for seven months, of which Kohls' share was 23% or $376.74.

From August 2012 through December 2012 the actual cost was $188 per month for both children, a difference of $242 per month for two months, of which Kohls' share was 23% or $55.66.

From January 2013 to the date of the hearing on the trial by affidavit, the actual cost was $232 per month for both children, a difference of $198 per month for eleven months, of which Kohls' share was 23% or $500.94. CP 303-304.

In an analogous situation, RCW 26.19.080(3) provides that if

> an obligor pays court or administratively ordered day care or special child rearing expenses that are not actually incurred, the obligee must reimburse the obligor for the overpayment if the overpayment amounts to at least twenty percent of the obligor's annual day care or special child rearing expenses.

Even before this statutory right was established, the Court recognized that a "limited right to reimbursement may exist under equitable common-law principles in certain circumstances." *In re Marriage of Barber*, 106 Wn.App. 390, 395, 23 P.3d 1106 (2001).

This is an equitable proceeding. It is not equitable to fail and/or refuse to order Kaplan to reimburse Kohls for overpaying her share of the actual cost of the children's health insurance for premiums which were not actually incurred, in the amount of $1,071.94, and its failure to do so, without any reason, was an abuse of its discretion. *In re Marriage of Scanlon and Witrak*, *supra*.

H. The Court Abused Its Discretion By Refusing To Order Kaplan To Reimburse Kohls For Unreimbursed Health Care Expenses.

Commissioner Jeske awarded Kohls $1,809.46 in unreimbursed health care expenses. CP 1208, 1213.

KCLR 7(b)(8)(A) requires that a motion for revision "shall identify the error claimed." In his motion for revision, Kaplan did not identify this award as an "error claimed".

Nonetheless, Kaplan did not include this award when he presented proposed final orders to the court. Over Kohls' objection, CP 1830, the court ruled that since Kaplan had sought revision of the commissioner's orders "in their entirety" (CP 1355-1356) that this issue was properly before it. CP 1856.

This was erroneous view of the law, and thus an abuse of the court's discretion. *In re Marriage of Scanlon and Witrak*, *supra*.

RCW 2.24.050 states in pertinent part:

> ...unless demand for revision is made within ten days from the entry of the order of judgment of the court commissioner, the orders and judgments shall be and become the orders and judgments of the superior court, and appellate review thereof may be sought in the same fashion as review of like orders and judgments entered by the judge.

Since Kaplan did not identify the commissioner's award as error, as required by KCLR 7(b)(8)(A), it became an order of the superior court subject to appellate review, but not revision. The court thus lacked statutory authority or any inherent power to revise this unclaimed error when Kaplan raised it for the first time by failing to include this award in his proposed final orders. *Robertson v. Robertson,* 113 Wash. App. 711, 714-715, 54 P.3d 708 (2002).

In addition, the court's refusal to award Kohls her unreimbursed health care expenses, for no reason, was an abuse of the court's discretion.

Commissioner Jeske ordered Kaplan to pay Kohls post-secondary support for Zachary, if and when he resided with his mother during his summer break from college. CP 1217.

Once again, Kaplan did not claim that this order was error in

his motion for revision, as required by KCLR 7(b)(8)(A), and accordingly, for the reasons cited above, the court thus lacked statutory authority or any inherent power to revise this unclaimed error. RCW 2.24.050; *Robertson v. Robertson, supra.*

Once again, however, Kaplan did not include this award when he presented final orders to the court. And again, over Kohls' objection, CP 1830-1831, the court did not include this award in its Adjusted Order of Child Support on Revision. CP 1839-1854.

This was error and thus an abuse of the court's discretion.

Also, regardless of whether this is properly a Petition for Modification or an adjustment proceeding, the court was required to address issues regarding post-secondary support for both children, as Kohls had requested in her Petition, CP 213-214, since no substantial change of circumstances is required. *In Re Marriage of Morris*, 176 Wn. App. 893, 901-902, 309 P.3d 767 (2013).

Accordingly, the court abused its discretion by striking Commissioner Jeske's award of post-secondary support for Zachary, by failing to make the same provisions for Idalia, as Kohls had requested in her Petition, and by failing to make it retroactive to the date Kohls' Petition for Modification was filed, as Kohls had

requested in her Motion for Revision, CP 1361-1362.

J. The Court Abused Its Discretion By Upholding the Court Commissioner's CR 11 Sanctions.

When Kohls submitted her proposed Child Support Worksheets with her proposed Final Order of Child Support Following Reconsideration to Commissioner Jeske, she included her *mandatory* pension plan payments in the amount of $141 per month and her voluntary retirement contributions of $416 per month. CP 1382.

Kaplan objected and moved for CR 11 sanctions, claiming that this was the first time in this proceeding that she had requested such deductions. CP 1387-1484.

Commissioner Jeske imposed CR 11 sanctions of $500, jointly and severally, against Kohls and her attorney in her Order on Petitioner's Motion for CR 11 Sanctions, CP 1489, and an additional $500 against Kohls individually in her Final Order of Child Support Following Reconsideration , CP 1491. She also refused to permit Kohls to take these mandatory deductions, CP 1500.

But in fact, these deductions had been included in the 2010 Order of Child Support, CP 230, and the proposed Child Support

Worksheets, CP 215, Kohls had attached to her Petition, and in her Financial Declaration. CP 236.

But, most significantly, such deductions from her gross income are mandated by RCW 26.19.071(5)(c) and (g).

On revision, the court revised the commissioner's ruling to permit these *mandatory* deductions, but adopted her "ruling and analysis" regarding her imposition of CR 11 sanctions, CP 1702, even though Commissioner Jeske had made no analysis.

These two rulings are not reconcilable.

In *Biggs v. Vail,* 124 Wash.2d 193, 197, 876 P.2d 448 (1994), the Supreme Court held:

> In deciding whether the trial court abused its discretion, we must keep in mind that "[t]he purpose behind CR 11 is to deter *baseless* filings and to curb abuses of the judicial system". *Bryant,* 119 Wash.2d at 219, 829 P.2d 1099. CR 11 is not meant to act as a fee shifting mechanism, but rather as a deterrent to frivolous pleadings. *Bryant,* at 220, 829 P.2d 1099.

In addition, in *Biggs v. Vail,* 124 Wash.2d at 201, the Supreme Court held:

> Finally, in imposing CR 11 sanctions, it is incumbent upon the court to specify the sanctionable conduct in its order. The court must make a finding that that either the claim

> is *not* grounded in fact or law and the attorney or party failed to make a reasonable inquiry into the law or facts, or the paper was filed for an improper purpose. CR 11. *See also Bryant,* at 219-20, 829 P.2d 1099. In this case, there were no such findings.

Nor were there any such findings here. Kohls' pleading was not baseless. Deductions for Kohls' pension contributions from her gross income are *mandated* by RCW 26.19.071(5)(c) and (g).

Accordingly, the court's judgment affirming these CR 11 sanctions for including these mandatory deductions in her proposed child support worksheets was an abuse of the court's discretion, and must be reversed. CP 1839-1840.

K. The Court Abused Its Discretion By Imposing CR 11 Sanctions Because Kohls' Attorney Provided It With a Post-Hearing Memorandum.

In this case, the court was tasked with reviewing voluminous records and files to address a multitude of issues raised by both parties in their respective motions for revision.

Two days before the revision hearing, Kaplan submitted Petitioner's Response to Respondent's Motion for Revision and Supplemental Motion for Revision. CP 1572-1608.

No rule or legal authority permits such a pleading. See,

KCLR 7(b)(8). RCW 2.24.050 "limits review to the record of the case and the findings of fact and conclusions of law entered by the court commissioner." *In re Marriage of Moody*, 137 Wash.2d 979, 992-993, 976 P.2d 1240(1999).

So Kohls initially moved to strike the Petitioner's Response, CP 1609-1613, but then withdrew her motion, recognizing that while KCLR 7(b)(8)(A) and (B) did not authorize such a pleading, neither did those rules prohibit a party from submitting such a pleading. Instead, Kohls submitted a Memorandum in Strict Reply to the Petitioner's Response, CP 1614-1643, which addressed only those issues raised in the Petitioner's Response.

Following the hearing, Kohls submitted a Post-Hearing Memorandum to assist the court in its review of those issues which had not been briefed before the hearing. CP 1644-1658. She did not raise any new issues, or proffer any new evidence.

Kaplan then moved to strike that Post-Hearing Memorandum and for CR 11 sanctions. CP 1675-1676. The court granted that motion "finding that the Post-Trial Memorandum is late-filed and not permitted by any court rule or statutory authority." CP 1683-1684. In support of its ruling, the court stated:

> LCR 7(b)(4)(A) requires the moving party to file all motion documents no later than six days before the date the party wishes the motion to be considered. Opposing documents have a similar deadline. LCR (b)(4)(D). This is an adversarial process. Despite the title of Ms. Kohls' memorandum, it is a document both in support of her position and opposed to Mr. Kaplan's, therefore falling squarely under the rules' requirements. Additionally, despite this court's admonishment to counsel to address only this motion for CR 11 sanctions, counsel elected to relitigate Commissioner Jeske's prior ruling on separate sanctions.(See footnote 2 of respondent's response).

The court awarded Kaplan $500 in CR 11 sanctions, CP 1684, and attorney fees in the amount of $1,410 against Kohls and her attorney, jointly and severally, CP 1691-1692.

This was an erroneous view of the law, and based on unreasonable or untenable grounds, and hence an abuse of the court's discretion. *McCausland v. McCausland*, 159 Wash.2d at 616; *Scanlon and Witrak*, 109 Wash. App at 174-175.

First, contrary to the court's reasoning, motions for revision are governed by KCLR 7(b)(8), not by KCLR 7(b)(4).

Secondly, just as with the Petitioner's Response, while KCLR 7(b)(8)(A) and (B) do not authorize a party to submit a post-hearing memorandum following a revision hearing, neither do those

rules prohibit a party from doing so.

Post-hearing memoranda are not uncommon. See eg. *City of Federal Way v. Town & Country Real Estate, LLC*, 161 Wash. App. 17, 29, 252 P.3d 382 (2011); *W.A. Botting Plumbing and Heating Co. v. Constructors-Pamco*, 47 Wash.App. 681, 736 P.2d 1100 (1987); *ML Park Place Corp. v. Hedreen*, 71 Wash.App. 727, 862 P.2d 602 (1993).

Thirdly, in footnote 2 of the Respondent's Response, CP 1678, Kohls did nothing more than respond to the statements in the Petitioner's Motion to Strike concerning the amount of Commissioner Jeske's CR 11 sanctions and the reasons she entered them, CP 1675-1676. This was completely consistent with the court's "admonishment".

Finally, there was **no** finding that Kohls' Post-Hearing Memorandum was "*not* grounded in fact or law and the attorney or party failed to make a reasonable inquiry into the law or acts, *or* the paper was filed for an improper purpose," as required by *Biggs v. Vail,* 124 Wash.2d at 201.

CR 11 is not meant to act as a fee shifting mechanism. *Biggs v. Vail,* 124 Wash.2d at 193; *Bryant v. Joseph Tree, Inc.,* 119

Wash.2d 210, 220, 829 P.2d 1099 (1992).

Accordingly, while the court had complete discretion to use or to not use that "Post-Hearing Memorandum", as it deemed fit, its service and filing is not a basis for finding a violation of CR 11 and an imposing an award of sanctions.

L. The Court Abused Its Discretion By Ordering Interest To Run On Commissioner Jeske's Award Of Sanctions, But Not Her Award Of Attorney Fees, From The Dates Of Those Awards.

On December 17, 2013, Commissioner Jeske awarded a judgment in favor of Kohls and against Kaplan for her reasonable attorney fees in the amount of $29,500 and her costs in the amount of $5,360.31, pursuant to RCW 26.09.140. CP 1211.

The court adopted Commissioner Jeske's "ruling and analysis with respect to attorneys' fees and costs" as well as her "ruling and analysis with respect to sanctions imposed against Mr. Berry and Ms. Kaplan." CP 1702.

The court said nothing about interest.

Yet, when Kaplan submitted his proposed Orders, he included the following language after the Judgment Summary pertaining to the award of sanctions (CP 1840):

> The above judgment confirms the CR 11 sanctions awarded against Sheila Kohls and her attorney, C. Nelson Berry III, jointly and severally, by Commissioner Jacqueline Jeske on June 16, 2014, as set forth in the *Final Order of Child Support Following Reconsideration* ($500) and *Order on Petitioner's Motion for Civil Rule 11 Sanctions* ($500). The above judgment supersedes these prior judgments except that interest shall have accrued on this judgment commencing June 16th, 2014 when the sanctions were first ordered.

There was no comparable language with respect to the judgment awarding Kohls attorney fees and costs against Kaplan.

Kohls objected to this disparate treatment (CP 1822):

> If interest is going to accrue on the judgments awarded to the Petitioner, then interest should accrue on the judgments awarded to the Respondent.

Nonetheless, without providing any rationale for such disparate treatment, the lower court ordered interest to run from the date sanctions were first ordered, but refused to order interest to run from the date that Commissioner Jeske had first awarded attorney fees and costs to Kohls. CP 1839-1840.

Such disparate treatment, without reason, is either based upon an erroneous view of the law, or based on unreasonable or untenable grounds, and hence an abuse of the court's discretion.

McCausland v. McCausland, 159 Wash.2d at 616; *Scanlon and Witrak*, 109 Wash. App at 174-175. It is inequitable.

Interest should commence on Commissioner Jeske's award of attorney fees in the amount of $29,500 and her costs in the amount of $5,360.31, from the date that judgment was entered, pursuant to RCW 4.56.110(4); *In re Marriage of Harrington*, 85 Wash. App. 613, 630-631, 935 P.2d 1357 (1997), and it became a liquidated sum, *Mahler v. Szucs*, 135 Wash.2d 398, 429, 957 P.2d 632, *corrected on denial of reconsideration*, 966 P.2d 305(1998); *Hadley v. Maxwell*, 120 Wash.App. 137, 84 P.3d 286, *amended on denial of reconsideration, review denied*, 152 Wash.2d 1030, 103 P.3d 200(2004).

M. The Court Abused Its Discretion By Failing To Award Kohls Her Reasonable Attorney Fees, Pursuant to RCW 26.09.140.

Although Commissioner Jeske did not find that Kaplan had engaged in intransigence, 11/22/2013 RP 53, she did find that Kohls was entitled to an award of her reasonable attorney fees and costs, pursuant to RCW 26.09.140, 11/22/2013 RP 54-56.

Kohls' requested that she be awarded reasonable attorney fees in the amount of $55,715, and her costs in the amount of

$5,360.31, for work through December 15, 2013. CP 1188-1205.

On December 17, 2013, Commissioner Jeske awarded a judgment in favor of Kohls and against Kaplan in the amount of $29,500 for her reasonable attorney fees, and her costs in the amount of $5,360.31, pursuant to RCW 26.09.140. CP 1211.

But she provided no reason for awarding little more than half of the attorney fees Kohls had requested. When pressed to explain why Kohls had been awarded so much less than what she had actually incurred and requested, the court stated, CP 1799-1800:

> The court has reviewed the respondent's request for reconsideration of its decision regarding an award of attorney fees. Counsel's fee declarations includes billing entries covering a year's worth of work on this case---much of it involving detailed financial analysis. This court noted that from a period beginning in July 2013 until the November 2013 initial hearing, counsel spent roughly the following time:
>
> 27 hours for document review
> 22 hours for deposition preparation and attendance
> 62 hours for legal research and briefing.
>
> Subsequent to the hearing, roughly 15 more hours were spent on legal research (for motion for reconsideration)---bringing a rough total of nearly $27,000 (approx. 80 hours of work) for research and briefing. In his August 1, 2014 strict reply memorandum (page 17 of a 30 page

> brief), counsel asserted that the proceedings herein "should have been inexpensive" but that the reason for the heightened costs were due to Mr. Kaplan's failure to provide discovery. But the time counsel spent on research and briefing is disproportionate to the time he spent on reviewing documents (his argument on high costs). The commissioner's award was appropriate for this period.
>
> From July through August, counsel spent roughly an additional 18 hours conducting legal research and briefing on his motion for revision. Subsequent to this court's order of 9/18/2014, he spent roughly an additional 14 hours on his motion for reconsideration, again for legal research and briefing.
>
> The issues however remained essentially the same. Ms. Kohls <u>does</u> have need for assistance with her attorney fees and Mr. Kaplan has the ability to pay. The court did not address Mr. Berry's request in its Sept 2014 order.
>
> Accordingly, Ms. Kohls is awarded an additional $8,750 in attorney fees, the court finding that a 25 hour investment of attorney time is reasonable considering the fact that much of the research and briefing had previously been conducted.

Concluding that Commissioner Jeske's award of barely half the attorney fees Kohls had requested was "appropriate" because "the time counsel spent on research and briefing is disproportionate to the time he spent on reviewing documents (his argument on high costs)", is either based on both an erroneous view of the law, and

on unreasonable or untenable grounds, and hence an abuse of the court's discretion. *McCausland v. McCausland*, 159 Wash.2d at 616; *Scanlon and Witrak*, 109 Wash. App at 174-175.

In the first instance, by what criteria did the court conclude that the time Kohls' attorney spent rendering legal services on one series of discrete tasks, like "research and briefing", was somehow "disproportionate", to the time he spent rendering legal services on a separate series of discrete tasks, like "reviewing documents"? No legal authority supports reducing a request for fees because the court thought "the time counsel spent on research and briefing is disproportionate to the time he spent on reviewing documents".

The court here abused its discretion by doing so here.

Secondly, when the court makes an award of substantially less than the amount of fees requested, it should indicate at least approximately how it arrived at the final numbers, and explain why discounts were applied. *Taliesen Corp. v. Razore Land Co.*, 135 Wash.App. 106, 146, 144 P.3d 1185 (2006); *Absher Constr. Co. v. Kent Sch. Dist. 415,* 79 Wash. App. 841, 848, 917 P.2d 1086 (1995).

The court abused its discretion by failing to do so.

Third. although it is unclear how the court segregated the hours spent on document review, for deposition preparation and attendance, and for legal research and briefing, at the initial hearing, Kohls requested attorney and paralegal fees for 135.67 hours (140.47- 4.8 hour for a double billing), for legal services rendered from July, 2013 through November 15, 2013, CP 976-989, not just the 111 hours which the court considered. CP 1799.

From November 15, 2013 through May 14, 2014, when Commissioner Jeske entered her Order on Reconsideration, CP 1344-1354, Kohls' requested fees for an additional 53 hours for legal services through March 24, 2014, CP 1188-1205, 1324-1328, not just the "roughly 15 more hours ... spent on legal research" the court took into account. CP 1799.

On November 21, 2014, when the court entered its Order on Clarification awarding an additional $8,750 in attorney fees, and found "that a 25 hour investment of attorney time is reasonable considering the fact that much of the research and briefing had previously been conducted", CP1800, Kohls had requested reimbursement for an additional 67.60 hours for legal services, through October 29, 2014, CP 1703-1721,1773-1774, 1794-1795,

not the just 32 hours the court considered. CP 1799.

Yet, without providing any reason, the court refused to even consider, much less, reimburse Kohls for the time her attorney spent rendering any other legal services, including but not limited to, drafting discovery requests and declarations; reviewing Kaplan's pleadings; communications with her, the court, or opposing counsel; his preparation for or attendance at court hearings; or any paralegal work. These legal services were just disregarded.

A reduction of fees, without explanation, is arbitrary and an abuse of discretion. *Wheeler v. Catholic Archdiocese of Seattle,* 65 Wash. App. 552, 575, 829 P.2d 196, *rev'd on other grounds*, 124 Wash.2d 634, 880 P.2d 29 (1994).

For this reason alone, the court's "finding that a 25 hour investment of attorney time is reasonable considering the fact that much of the research and briefing had previously been conducted" is not supported by substantial evidence.

The proper analysis for determining a reasonable fee is set forth in *Matter of Marriage of VanCamp*, 82 Wash. App. 339, 342, 918 P.2d 509 (1996), where the Court held:

> In calculating the basis for a reasonable fee in

> a marital dissolution, the court should consider: "(1) the factual and legal questions involved; (2) the time necessary for preparation and presentation of the case; and (3) the amount and character of the property involved." *Knight*, 75 Wash. App. at 730, 880 P.2d 71 (citing *Abel v. Abel*, 47 Wash.2d 816, 819, 289 P.2d 724 (1955)). The court then appraises these factors in light of the equities of the marital distribution and the considerations of RCW 26.09.140.

In this case, the factual and legal questions involved were difficult and complex. The revising court adopted "Commissioner Jeske's ruling and analysis with respect to attorneys' fees and costs," CP 1702, as to why they were as high as they were given "the degree of difficulty in ascertaining Mr. Kaplan's true income." CP 1698-1701; See also, 11/22/13 RP 36-45.

The time necessary for preparation and presentation of the case was substantial, not only because of the number of different business entities and financial records which had to be analyzed, but also because Kaplan made it unduly difficult to obtain this information. As Commissioner Jeske observed, 11/22/13 RP 38:

> The Court was also confused by the level of obfuscation here. The sources of the father's personal and business deductions and income, given his education, given his work history, 30 years in some very well-known and highly regarded firms, given that he has a CPA and a

> bookkeeper, I would have expected to have been able to really gain a better understanding from him ....I kept waiting to read it, but I didn't see it.

The amount and character of the property involved was substantial, involving numerous LLCs holding fractional interests in several different apartment buildings. Kohls' attorney was in the same position as the appellant's attorney in *Friedlander v. Friedlander,* 58 Wash.2d 288, 290, 297, 362 P.2d 352 (1961):

> Prior to trial, appellant's counsel had the serious responsibility of investigating the history and diverse ramifications of [Kaplan's] enterprises.... Their client had no intimate knowledge of these matters. Counsel were under a duty to check the accuracy of the various financial records and other data furnished by respondent and to investigate every rumor or fact which might reasonably have a bearing on their client's legal rights in the premises. We must view the situation in which appellant's counsel found themselves as it existed *prior* to trial and not in the light of facts disclosed at the trial. As the trial court observed, an extraordinary amount of difficult work was done by appellant's counsel.

Just as the Court found in *In re Marriage of Mattson*, 95 Wash. App. 592, 606, 976 P.2d 157 (1999), Kaplan

> produced conflicting information about his income and, by his actions, forced [Kohls] to conduct intense discovery, which increased her legal bills.

As this Court explained *In re Marriage of Morrow*, 53 Wash.

App. 579, 591, 770 P.2d 197(1989):

> Another factor to consider is the difficulty of the litigation, as measured by the number of days required to try the case and the size of the record. *See Friedlander v. Friedlander,* 58 Wash.2d 288, 290, 297, 362 P.2d 352 (1961) (5 days, 650 pages, and 127 exhibits). The necessity of having to unravel numerous transactions to establish community interests justifies an award reflecting the fees and costs incurred in the process.

While there were no community interests to unravel here, the task was no less arduous in trying to determine Kaplan's true income, as the court recognized. CP 1698-1701; See also, 11/22/13 RP 36-45. But its award does not reflect "the fees and costs incurred in the process." *Id.*

This was an abuse of the court's discretion.

These factors are especially significant given "the equities ... and the considerations of RCW 26.09.140." *Van Camp, supra*.

The fundamental purpose of RCW 26.09.140 is "to make certain that a person is not deprived of his or her day in court by reason of financial disadvantage." *In re Marriage of Burke*, 96 Wash. App. 474, 479, 980 P.2d 265 (1999). It has long been the policy in this State, legislatively and judicially, that if a spouse is

without funds and the other spouse has the ability to pay, denial of fees is an abuse of discretion. *Valley v. Selfridge*, 30 Wn. App. 908, 918, 639 P.2d 225 (1982); *Krieger v. Krieger*, 133 Wash. 183, 185, 233 P. 306 (1925). This is particularly true where those disputes involve children and their support:

> In RCW 26.09.002, our Legislature stated: "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." This legislative mandate applies to both the Burkes' litigation regarding their child and Ms. Burke's request for attorney fees.

In re Marriage of Burke, 96 Wash. App. at 478. Parents are trustees with regard to the support of their children, *Hartman v. Smith,* 100 Wash.2d 766, 768, 674 P.2d 176 (1984); *Hammack v. Hammack*, 114 Wash.App. 805, 808, 60 P.3d 663 (2003). Kaplan thus owed a fiduciary duty to be honest when he disclosed his income for the purpose of determining his child support obligation.

Yet, Kaplan was dishonest about his true income throughout this proceeding. For example, in his Response to Kohls' Petition, Kaplan attested that "his income has *decreased* by approximately $1,024 per month since the last Order of Child Support was

entered," CP 248, to a net monthly income of $7,112.74. CP 250, CP 241. These false material representations of existing facts, which Kaplan intended both Kohls and the court to justifiably rely upon, constituted fraud. *Angelo v. Angelo*, 142 Wash. App. 622, 643, 175 P.3d 1096 (2008).

To properly exercise of her fiduciary duties, Kohl had no choice but to do what she could to obtain the information necessary to enable the court to accurately determine Kaplan's true income to establish his share of the support obligation for his children.

A comparison of hours and rates charged by opposing counsel is probative of the reasonableness of Kohls' request. *Fiore. v. PPG Industries, Inc.*, 169 Wash. App. 325, 354, 279 P.3d 972 (2012). Kaplan's attorney normally charges $325 per hour for her time, but only charged him $300 per hour because that was her rate when he originally became her client, CP 650. Kohls' attorney charges $350 per hour, CP 255. Both hourly rates are reasonable.

From the "period beginning in July 2013 until the November 2013 initial hearing", Kaplan incurred attorney fees and costs "conservatively estimated to be $44,614" (which included $1,507 in costs), after giving him "professional courtesy reductions "totaling

$2,400. CP 650-659, 846-850. Kaplan typically deducts his attorney fees as "business expenses". 11/22/2013 RP 55.

During this same period, Kohls incurred $46,772 in fees and $3,938.71 in costs. CP 255-267, 976-989.

If Kaplan's attorney had charged her client $350 per hour, like Kohls' attorney, Kaplan's fees and costs would have exceeded those charged by Kohls' attorney. Yet, Kohls' attorney had to engage in extensive discovery and scrutinize literally thousands of documents to try to ferret out Kaplan's true income---tasks which Kaplan's attorney did not have to do.

By January 12, 2015, Kaplan had spent more than $80,000 on attorney fees. 1/12/2015 RP 8. Yet, Kohls was awarded less than half of what Kaplan had incurred.

To the extent the court refuses to require Kaplan to pay these fees, Kohl must pay them. And she can only pay them through the support which is awarded, or by selling her few assets.

The court's ruling thus defeats the very purpose of both the child support statutes and RCW 26.09.140, and rewards the obstructionist and deceptive tactics which Kaplan employed here.

It was thus an abuse of its discretion.

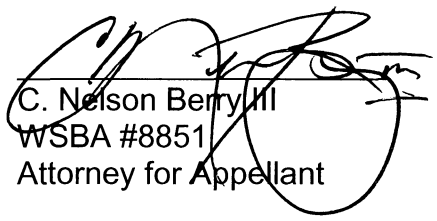
N. Kohls Should Be Awarded Her Reasonable Attorney Fees and Costs Incurred On Appeal.

RCW 26.09.140 provides for an award of attorney fees on appeal. In exercising its discretion under this statute, the court considers the arguable merit of the issues on appeal and the parties' financial resources. *In re Marriage of Raskob*, 183 Wash. App. 503, 520, 334 P.3d 30, 39 (2014). CP 1800.

Kohls' appellate issues have merit. And, as has been previously determined, Kohls needs assistance to pay her attorney fees, and Kaplan has the ability to pay them. CP 1800.

Kohls requests that she be awarded the reasonable attorney fees and costs she has incurred on this appeal.

Respectfully submitted this 3rd day of June, 2015.



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Certificate of Service

I certify that on the 3rd day of June, 2015, I caused a copy of the foregoing Opening Brief of Appellant to be served on the attorney for the Respondent, by hand-delivery by ABC Messenger Service, to the following address:

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And to be delivered to the Associate Counsel for Respondent, by ABC Messenger Service, to the following address:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED THIS 3rd day of June, 2015, at Seattle, Washington.

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