

66044-6

66044-6

**NO. 66044-6-I**

**COURT OF APPEALS, DIVISION ONE  
OF THE STATE OF WASHINGTON**

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**KENNETH GREEN,**

**Appellant,**

**v.**

**CHERYL GREEN,**

**Respondent.**

*[Handwritten signature]*  
2011-11-15 11:55:00

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**BRIEF OF APPELLANT**

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## **I. ASSIGNMENTS OF ERROR AND ISSUES**

### **A. Assignments of Error**

1. The trial court erred in finding that appellant husband has advanced degrees and a history of progressively more responsible employment, that his record of employment inquiries shows a total of only two in-person contacts over the last 18 months, and that he is voluntarily unemployed (FOF 2.20) (CP 136).

2. The trial court erred in imputing income to the husband “based upon his most recent work history” (COL 3.8) (CP 137).

3. The trial court erred in imputing income to the husband of \$4,427.19 per month “because the obligor is voluntarily unemployed” (Order of Child Support, ¶ 3.2 (CP 139); WSCCS Worksheet, ¶ 3 (CP 149); WSCSS Worksheet, Child Support Order Summary Report, p. 1, ¶ E) (CP 148).

4. The trial court erred in basing its decision regarding the imputation of income on the husband’s “admission of potential earning capacity, as stated in his Declaration dated November 4, 2009” (Order of Child Support, ¶ 3.2) (CP 139), referring to CP 57.

5. The trial court erred in determining that the basic child support obligation was \$1,506 (WSCSS Worksheet, ¶ 5) (CP 149) and that the husband should pay \$731.92 per month as a monthly transfer amount to the wife (Order of Child Support, ¶ 3.5 (CP 140); ¶ 3.6 (CP 141); WSCSS

Worksheet, ¶ 15) (CP 150).

**B. Issues Pertaining to Assignments of Error**

1. Is the trial court required to consider the work history, education, health, age and other relevant factors to determine whether a person is voluntarily unemployed? (Assignment 1, 2, 3, 4.)

2. Is there an absence of substantial evidence supporting the trial court's decision to impute income to the husband? (Assignment 1, 2, 3, 4.)

3. Is there a lack of substantial evidence supporting the trial court's determination of the basic child support obligation and transfer payment, where the trial court extrapolated on some unknown basis, without making any findings, from \$1,218 per month to \$1,506 per month? (Assignment 5.)

## II. STATEMENT OF THE CASE

Appellant Kenneth Green (the “husband”) is a black male born in 1952 (RP 32, 237). At the time the decree of dissolution was entered in October, 2010, he was some three months shy of his 58<sup>th</sup> birthday (CP 126).

The husband married Cheryl Green (the “wife”) in 1995 (FOF 2.4).<sup>1</sup> They had a 15-year old daughter (FOF 2.17). The husband thought he had a “good, solid” marriage as of April 20, 2009 (RP 11). The next day, however, the husband was to take the daughter to school by 10:00 a.m. (RP 11-12). He and the daughter were alone in the house together, as the wife had already left for work that morning (RP 13). The husband asked the daughter to clean her room twice, and the second time the daughter made a disrespectful comment to him and walked past him (RP 12). The husband stopped her, turned her around and escorted her into her room (RP 12). He took her to school, and she did not appear to be visibly upset or traumatized (RP 12).

The husband went to do some errands, returned to the house and ate (RP 12-13). At about 12:30 that afternoon two police officers arrived at the door of the house and stated that they were arresting the husband for domestic violence (RP 13). The husband had no idea what they were talking about or whom he was alleged to have committed domestic violence against (RP 13).

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<sup>1</sup>The Findings of Fact and Conclusions of Law at found in CP 134-37 and CP 153-54, a copy of which is set forth in Appendix B.

At the time of the arrest, there was a protection order entered precluding the husband from returning to the house (RP 14). The wife never at any time, even including the time of the dissolution trial, ever asked the husband what happened that morning (RP 13-14).

There was a later criminal trial in which the wife, daughter and husband testified (RP 14). The husband was found not guilty (RP 13). Between April 21<sup>st</sup> and the time of the trial in July, 2009, the husband basically was homeless, living out of the trunk of his car, living in motels, staying with friends (RP 14-15). Following the criminal trial and expiration of the protection order, the wife moved out of the family home (RP 15). The husband returned to the house shortly thereafter (RP 15).

The husband has an undergraduate degree in business administration from the University of Washington and has been a licensed certified public accountant since 1995 (RP 24, 52). He has been a certified internal auditor for more than twenty-five years (RP 24). He is also a certified fraud examiner (RP 24). He has worked as an internal auditor for the City of Seattle, Premera Blue Cross, Snohomish County, Regence Blue Shield, Washington Mutual and Safeco Corporation (RP 25). He also taught a class at City University in financial account statement analysis for one quarter (RP 60).

The husband's last job with Safeco ended on December 3, 2008 (RP

25). Liberty Mutual purchased Safeco in the spring of 2008 (RP 25). In September of 2008 Liberty Mutual provided 60-day notices eliminating the positions of the internal auditing vice-president, the assistant vice-president to whom the husband reported and other senior members, including the husband (RP 26). The husband has not worked since December 3, 2008 (RP 26).

The husband started his search for a new job long before his final day with Safeco (RP 26). His job search logs, filled out in his handwriting, were admitted into evidence (Ex. 12). The logs consist of forty pages, each containing six entries regarding the person or company the husband contacted and manner of contacting the company. The Employment Security Department required the husband to report at least three contacts per week (at the time of trial the amount was four per week) (RP 27). Actually, the husband's job search has been much more extensive than documented in the job search logs (RP 27). The husband received a weekly amount of \$586.00 in unemployment benefits (RP 27).

On cross examination of the husband, the wife's counsel asked a question and the following exchange took place:

Q. So out of 240 employer contacts here that you have made in this time frame, which is a year and a half, do you think it is reasonable, based on your own Exhibit 12, that you only had two in-person contacts out of 240?

MR. YOUNG: I will object, Your Honor. It is argumentative and calls for speculation.

THE COURT: Sustained.  
Rephrase the question, please.

Q. (By Ms. Saxion) You made how many contacts in person out of all of these individuals that you interviewed?

THE COURT: I'm sorry, counsel. It is after twelve o'clock. Let's take our noon recess. We will reconvene at 1:30.

...

(RP 95-96).

Following the recess, the question was not re-asked, and the issue did not come up again during the trial (RP 96).

The wife testified that the husband had experienced several long-term periods of unemployment during the marriage (RP 107-8). She further testified that the husband would historically work maybe a year, and before the probation period was up, his employer would let him go (RP 108). The husband would receive unemployment compensation for about a year, then get another job (RP 108). The wife stated that this pattern happened probably three or four times (RP 108). She stated on cross examination that her husband worked for Safeco for about a year and a half, Washington Mutual for a year and a half, Premera for one year, the City of Seattle for one year and Regence Group for one year (RP 215).

The husband testified that his first internal auditor job out of college

was Consolidated Electrical Distributors, where he worked for four years (RP 280). He worked for the IRS for eight years, Primera Blue Cross for four years, and a similar amount of time for Regence (RP 280).

The husband is currently in good health, although he was diagnosed with prostate cancer three years before the trial (RP 43-44). The husband did have to take several urgent breaks during the trial due to his prostate condition (RP 74, 165).

On November 10, 2009, following a motion by the wife, the commissioner entered a temporary order of child support (CP 90-103). The wife argued that the court should impute income to the husband. *Id.* The commissioner rejected that argument, and used the husband's unemployment benefits to determine his income for child support purposes (CP 91, 100).

Following trial in the summer of 2010, the trial court entered an order of child support (CP 138-152). The court imputed net income to the husband of \$4,427.19 per month, and added that to the wife's net income of \$4,684.19, to obtain combined monthly income of \$9,111.38 (CP 149, ¶¶ 3 and 4). From this amount the basic child support obligation was determined to be \$1,506 per month (CP 149, ¶ 5). The amount of the transfer payment payable to the wife was considered to be the "standard calculation", i.e., \$731.92 per month (Order of Child Support, ¶ 3.6) (CP 141).

The trial court entered Finding of Fact 2.20 as follows:

Father has advanced degrees and a history of progressively more responsible employment. His record of employment inquiries shows a total of only two in-person contacts over the last 18 months. He is voluntarily unemployed.

(FOF 2.20; CP 136).

The court also determined that the order of child support “assumes income imputed to Husband based upon his most recent work history.” (COL 3.8; CP 137). The trial court further entered findings in the Order of Child Support as follows:

For purposes of this Order of Child Support, the support obligation is based upon the following income:

The income of the obligor is imputed at \$4,427.19 because the obligor is voluntarily unemployed.

The amount of [imputed] income is based on the following information in order of priority. The court has used the first option for which there is information: Petitioner’s admission of potential earning capacity, as stated in his Declaration dated November 4, 2009.

(Order of Child Support, ¶ 3.2) (CP 139). The husband’s November 4<sup>th</sup> declaration was submitted in connection with the wife’s request for temporary child support (CP 49-58) and was not admitted as an exhibit at trial (CP 119-121).

### **III. SUMMARY OF ARGUMENT**

The trial court erred in determining that the husband was voluntarily unemployed. RCW 26.19.071(6) provides that the court shall make such a

determination “based upon that parent’s work history, education, health, and age, or any other relevant factors.” There is no indication that the trial court considered these factors.

The court, in fact, considered a document which was not even offered or admitted into evidence, i.e., the November 4, 2009, Declaration of Kenneth Green, cited in the Order of Child Support, ¶ 3.2 (CP 139). Statements in that declaration were taken to be an “admission of potential earning capacity.” The husband had no notice that that declaration was even being considered for such purpose.

In addition, the trial court’s determination that the husband was voluntarily unemployed is not supported by substantial evidence. The wife acknowledged that the husband had three or four long-term periods of unemployment during the fifteen-year marriage (RP 107-8). The pattern was for the husband to work a year or so, then the employer would terminate the husband’s employment (RP 108). The husband would receive unemployment for about a year, then get another job (RP 108). The husband was downsized out of his job at Safeco following its purchase by Liberty Mutual in 2008 (RP 26).

This Court can take judicial notice of the generally bad state of the U.S. economy and the high levels of unemployment, as the trial court was asked to do (CP 115). ER 201. It is thus not surprising that it takes

unemployed people longer to find a job. It is also well known that older people, such as those nearing retirement age, have a harder time finding a job than younger workers.

The trial court also misconstrued some of the evidence. The finding that the husband “has advanced degrees” (FOF 2.20) (CP 136) is incorrect. The father has one degree: a bachelor’s degree from the University of Washington (RP 24). The trial court’s factual finding that the father has “a history of progressively more responsible employment” (FOF 2.20) is nowhere supported by any evidence admitted at the trial.

The trial court’s factual finding that the father’s “record of employment inquiries shows a total of only two in-person contacts over the last 18 months” (FOF 2.20) (CP 136) is also erroneous. Examination of Exhibit 12 shows six in-person contacts, i.e., those taking place on 1/20/09; 2/11/09; 6/18/09; 10/8/09; 2/4/10; and 5/24/10 (Ex. 12). Moreover, without some kind of evidence as to what would be expected or considered reasonable, there is no way the court can determine that only two, or six, or any other number of in-person contacts supports the conclusion that the person in question is voluntarily unemployed. After all, a job applicant cannot himself schedule an interview with a prospective employer. All he can do is contact the prospective employer and request an interview. Whether an interview is granted is completely up to the employer.

Finally, the trial court erroneously calculated the transfer payment by imputing income to the husband. The error was compounded by extrapolating the basic child support obligation from the economic table regarding the monthly basic support obligation per child. The economic table is presumptive for combined monthly net incomes up to \$12,000. According to the Economic Table attached to the Child Support Schedules, the advisory monthly basic support for a child over 11 in a one-child family whose combined monthly net income is \$7,000, is only \$1,218. Yet the trial court, without making any factual findings, used a monthly basic support amount of \$1,506.00. This violates the holding in *In re Marriage of McCausland*, 159 Wn.2d 607, 620-21, 152 P.3d 1013 (2007).

#### **IV. LEGAL ARGUMENT**

##### **A. This Court's Review of the Trial Court's Decision Involves an Abuse of Discretion Standard.**

The court of appeals reviews the trial court's findings of fact and conclusions of law to determine whether substantial evidence supports the findings and in turn, whether the findings support the trial court's conclusions of law. *Scott v. Trans-System, Inc.*, 148 Wn.2d 701, 707-08, 64 P.3d 1 (2003). Substantial evidence is that sufficient to persuade a fair minded person of the finding's truth. *City of Tacoma v. William Rogers Co.*, 148 Wn.2d 169, 191, 60 P.3d 79 (2002).

Also, child support orders are reviewed for abuse of discretion. *In re Marriage of Griffin*, 114 Wn.2d 772, 776, 791 P.2d 519 (1990). A court abuses its discretion if its decision is “based on an incorrect standard or the facts do not meet the requirements of the correct standard.” *In re Marriage of Fiorito*, 112 Wn. App. 657, 664, 50 P.3d 298 (2002). A court also abuses its discretion if its decision was manifestly unreasonable or was based on untenable grounds or untenable reasons. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997).

**B. The Trial Court Did Not Consider the Factors Set Forth in RCW 26.19.071(6) Regarding the Determination of Voluntary Unemployment.**

RCW 26.19.071(6) provides for the imputation of income as follows:

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, disability lifeline benefits, 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 [*italics added*].

RCW 26.19.061(6).

Voluntary unemployment is not defined in the above statute; rather courts have found “the usual and ordinary meaning of that term to be unemployment that is brought about by one’s own free choice and is intentional rather than accidental . . .” *In re Marriage of Brockopp*, 78 Wn. App. 441, 446 n. 5, 898 P.2d 849 (1995); *Clarke v. Clarke*, 112 Wn. App. 370, 375-76, 48 P.3d 1032 (2002).

The record in this case does not show the trial court considered all of the above statutory factors. In the very least the trial court misapprehended

these factors. For example, the trial court found that the husband has “advanced degrees” (FOF 2.20) (CP 136), but the husband has only an undergraduate degree (RP 24). The trial court found that the husband has “a history of progressively more responsible employment” (FOF 2.20) (CP 136), but there is no evidence in the record to support this finding. The husband was an internal auditor for a number of companies, but there was no evidence he had more progressively responsible employment at each of these companies. There was no testimony that he supervised other employees or rose in the managerial ranks. The husband was simply an internal auditor.

The trial court also indicated that it imputed income to the husband “based upon his most recent work history” (COL 3.8) (CP 137). That work history occurred before the current recession in 2008. The husband did not voluntarily leave his job, but was involuntarily terminated on December 3, 2008, because of a consolidation of two companies (RP 26). He has not worked since that time (RP 26). By the time of trial, despite his extensive efforts to contact potential employers and find a job, he had not been offered any job in the previous eighteen months. His work history prior to 2008 does not provide a logical basis for concluding that he would be able to find a job in the context of the current economic recession.

The trial court determined that the husband’s record of employment inquiries “shows a total of only two in-person contacts over the last 18

months” (FOF 2.20) (CP 136). This is demonstrably erroneous. Casual examination of Exhibit 12 shows six in-person contacts, i.e., on 1/20/09; on 2/11/09; on 6/18/09; on 10/8/09; on 2/4/10; and on 5/24/10 (Ex. 12). More importantly, the trial court failed to demonstrate either the logical or factual connection between the number of in-person interviews the husband had, versus the number he should have had, or the number a reasonable person in his situation would have had. It is commonly known that employers determine whom they will interview, not the other way around. The husband can do nothing to get an in-person interview, if the potential employer does not want to give him one. The wife has failed to show what else the husband could have done to get a job, but did not do.

While the trial court thus misapprehended the husband’s work history and education, it did not even consider his health or age. While the husband is physically able to work in spite of his bout with prostate cancer, it is also well known that people approaching retirement are not the most sought after employees. The husband’s age of 58 is a disadvantage, not an advantage.

In sum, there is no basis for concluding that the husband’s unemployment was voluntary, i.e., brought about by his own free choice. He was involuntarily terminated from his job at Safeco and simply unable to get another job in these tight economic times.

**C. The Trial Court's Conclusion that the Husband Was Voluntarily Unemployed Is Not Supported by Substantial Evidence.**

The burden is on a spouse making a claim to establish the claim. *In re Marriage of Shui and Rose*, 132 Wn.App. 568, 584, 125 P.3d 180 (2005) (burden is on the spouse claiming separate funds to clearly and convincingly trace them to a separate source); *In re Marriage of Dodd*, 120 Wn.App. 638, 644, 86 P.3d 801 (2004) (party seeking child support modification bore the burden of showing his financial condition justified a reduced obligation). The wife claimed in her opening statement at trial, without offering any basis, that income should be imputed to the husband (RP 7). Thus the wife, as the party claiming that the husband was “voluntarily unemployed,” had the burden to establish such claim. She has failed in that burden.

The husband presented *prima facie*, extensive evidence of looking for a job (Ex. 12). The wife acknowledged that the husband had similar long periods of unemployment during the marriage (RP 107-08). There is no suggestion here that the husband is purposefully or intentionally or voluntarily not finding a job, so as to lower his child support payment. The wife has thus not overcome the evidence that the husband, for reasons which have occurred multiple times during his career, was let go by his employer. This is not voluntary unemployment, but involuntary unemployment.

The husband's work history shows that all of his periods of

unemployment have been involuntary. According to the wife, the husband works for year or so, then is terminated from his job (RP 107-08). He does not get a new job until unemployment benefits are nearly exhausted. She did not say it directly, but implies it is because he would rather draw unemployment at \$586 per week (RP 27) rather than work for two or three times that amount. Yet in all of these instances, the unemployment was not voluntary. H was terminated, just as he involuntarily lost his job during downsizing following the sale of Safeco to Liberty Mutual in late 2008. It is common knowledge that there was a severe recession in 2008, which is still continuing, and that millions of people are out of work. This Court should take judicial notice of the recession and general state of the economy. ER 201.

Moreover, auditing is not a necessary or core business function, so it is not surprising that auditing or accounting jobs may not rebound until the economy picks up. There was no evidence presented at trial that the husband did not do all that he could do to find employment within his educational background and range of experience.

If there is no evidence in the record that a spouse's unemployment is voluntary, it is reasonable for the trial court to conclude that the unemployment is not voluntary. *Matter of Marriage of Booth*, 114 Wn.2d 772, 777-78, 791 P.2d 519 (1990). Similarly here, where there is no evidence

that the husband's unemployment is voluntary, it is reasonable to conclude that the husband's unemployment is not voluntary. The trial court's conclusion to the contrary is not supported by substantial evidence.

**D. The Trial Court Should Not Have Imputed a \$65,000 per Year Income to the Husband.**

The WSCSS Worksheet imputed a gross monthly income to the husband of \$5,416.66 (CP 149). This is \$65,000 per year. There was no evidence at trial that any employer had any available internal auditor or accounting jobs available at that salary.

The trial court, however, apparently based its decision regarding the imputation of income on the husband's "admission of potential earning capacity, as stated in his Declaration dated November 4, 2009" (Order of Child Support, ¶ 3.2) (CP 139). That declaration (CP 49-58) was neither offered at trial nor admitted into evidence (CP 119-121). The wife did not examine the husband on the contents of the declaration at trial.

Subject to exceptions not applicable here, it is clear that the trial court cannot decide cases based upon evidence which was neither offered nor admitted at trial. *Dodge v. Stencil*, 48 Wn.2d 619, 622, 296 P.2d 312 (1956) (superseded pleading containing admission against interest "must be offered in evidence before it can be used as proof of the matter contained therein").

Moreover, the declaration is hearsay. ER 801(c). Hearsay is

generally inadmissible. ER 802. Of course, the declaration would not be hearsay if, for example, the declarant testified at the trial and was subject to cross examination concerning the statement. ER 801(d)(1). The declaration would also not be hearsay if it were "offered against a party" and was the party's own statement. ER 801(d)(2). Here neither one of these two evidence rules applies, because the husband was not subject to cross examination regarding the declaration, because he was not questioned about it. The declaration was also not "offered" at trial. It was not even mentioned at trial. The trial court should not be permitted to peruse the court file and pull out statements from declarations submitted months earlier in connection with pre-trial motions, then use those statements to support factual and legal conclusions on substantive matters at trial, all without notice to the litigants. This violates the litigants' fundamental due process rights of notice and an opportunity to respond.

"A court exercises its discretion in an untenable and manifestly unreasonable way when it essentially guesses at an income amount." *State ex rel. Stout v. Stout*, 89 Wn.App. 118, 125, 948 P.2d 851 (1997). Here the trial court had no admissible evidence upon which to base an imputed income of \$65,000 per year for the husband. The trial court was simply making a guess.

Moreover, income should be imputed at the level "at which the parent

is capable and qualified". *In re Marriage of Sacco*, 114 Wash.2d 1, 4, 784 P.2d 1266 (1990) (citing Washington State Child Support Commission's 1987 report to the Legislature); *In re Marriage of Shellenberger*, 80 Wn.App. 71, 81, 906 P.2d 968 (1995). There was no showing that the husband was capable of making \$65,000 per year in the current economic environment. His gross income from unemployment was \$2,444 per month (CP 91). That income should have been used to calculate his child support obligation, rather than money he did not have. It does not benefit the child to set child support in an amount far greater than the obligor is able to pay.

Furthermore, the trial court should not impute income based solely on the oral testimony of a party without verification of the income. *In re Custody of BJB*, 146 Wn.App. 1, 15, 189 P.3d 800 (2008). The wife did not present any information to verify the income that the husband was capable of making in the current economic environment.

For the above reasons, the trial court erred in imputing income of \$65,000 per year to the husband, and basing his child support obligation on that amount of gross income.

**E. The Trial Court Miscalculated the Basic Monthly Child Support Obligation.**

Unsupported extrapolation of child support is an abuse of discretion. *In re Marriage of McCausland*, *supra*, 159 Wn.2d 607, 620-621. In

*McCausland*, the trial court directly extrapolated beyond the standard support calculation when the parents' combined incomes exceeded \$7,000.00 per month.<sup>2</sup> 159 Wn.2d at 613-14. In reversing the trial court's child support order, the court noted that none of the appellate courts had ruled correctly on extrapolating an increased amount of child support from the approved child support schedule. 159 Wn.2d at 619. It held that, because the legislature did not provide for the extrapolation of child support for high-income families, trial courts must support any order exceeding the standard calculation with specific findings showing extraordinary expenses or circumstances necessitating the excess child support. *McCausland*, 159 Wn.2d at 620-21; *In re Marriage of Choate*, 143 Wn. App. 235, 242-243, 177 P.3d 175 (2008). Thus, written findings of fact supported by substantial evidence are required when a trial court deviates from the standard support calculation. *McCausland*, 159 Wn.2d at 620-21 (mechanical extensions of chapter 26.19 RCW do not satisfy the statute's requirements.)

Further, RCW 26.19.075(e)(3) also requires the court to “enter findings that specify reasons for any deviation . . . from the standard calculation made by the court.” There are no findings here specifying the reason the basic monthly child support amount found here, i.e., \$1,506 per

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<sup>2</sup>The amount has now increased to \$12,000 per month.

month (CP 149, ¶ 5), which exceeds the table amount of \$1,218 per month. There was no finding that the daughter had extraordinary expenses or needed additional child support. The basic monthly child support amount is therefore too high by at least \$288 per month, even if there were no other infirmities in the child support calculation.

**F. The Appellant Husband Requests Attorney's Fees.**

The court has discretion to award attorney fees based on a balancing of the needs of the spouse seeking fees against the ability of the other spouse to pay. RCW 26.09.140; *In re Marriage of Moody*, 137 Wh.2d 979, 994, 976 P.2d 1240 (1999). Here the husband does not have the financial ability to pay the fees, and the wife does. Fees should be awarded to the husband based on his need and the wife's ability to pay. *See, Marriage of Choate, supra*, 143 Wn. App. at 246.

**V. CONCLUSION**

For the reasons set forth above, the court should reverse the trial court's child support order imputing income to the husband, vacate the child support amount, and remand the case for modification in accordance with this court's decision.

RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of April, 2011.

**Law Offices of Dan R. Young**

By Dan R. Young  
Dan R. Young, WSBA # 12020  
Attorney for Appellant  
Kenneth Green

# **EXHIBIT A**

**Superior Court of Washington  
County of King**

In re the Marriage of:

KENNETH GREEN,  
Petitioner,  
and  
CHERYL GREEN,  
Respondent.

No. 09-3-04975-4 SEA

Decree of Dissolution (DCD)

Clerk's action required

Law Enforcement Notification, ¶ 3.8

**I. Judgment/Order Summaries**

**1.1 Restraining Order Summary:**

Restraining Order Summary is set forth below:

Name of person(s) restrained: Kenneth Green. Name of person(s) protected: Cheryl Green and Alexis Green. **See paragraph 3.8.**

***Violation of a Restraining Order in Paragraph 3.8 Below With Actual Knowledge of its Terms Is a Criminal Offense Under Chapter 26.50 RCW and Will Subject the Violator to Arrest. RCW 26.09.050.***

**1.2 Real Property Judgment Summary:**

Real Property Judgment Summary is set forth below. Real property is awarded to Husband, and shall become his separate property, SUBJECT TO mortgages, deeds of trust, security interests of any nature, taxes, and all other liens or clouds on title.

Assessor's property tax parcel or account number: 4006000436

**1.3 Money Judgment Summary:**

A. Judgment creditor	<u>Cheryl Green</u>	
B. Judgment debtor	<u>Kenneth Green</u>	
C. Principal judgment amount		\$ 2,000.00
D. Interest to date of judgment		0
E. Attorney fees		0
F. Costs		0
G. Other recovery amount		0
H. Principal judgment shall bear interest at 6% per annum		
I. Attorney fees, costs and other recovery amounts shall bear interest at 0% per annum		

J. Attorney for judgment creditor

Lori M. Saxton, JPLLC  
733 – 1<sup>st</sup> Avenue North  
Kent, WA 98032

K. Attorney for judgment debtor

Law Offices of Dan R. Young  
1000 Second Avenue, #3310  
Seattle, WA 98104

L. Other:

### **End of Summaries**

## **II. Basis**

The court made Findings of Fact and Conclusions of Law in this case.

## **III. Decree**

### **3.1 Status of the Marriage**

The marriage of the parties is dissolved.

### **3.2 Property to be Awarded Husband**

The husband is awarded as his separate property the property set forth in Exhibit A, which is attached to the Findings of Fact and Conclusions of Law and incorporated by reference as part of this decree.

### **3.3 Property to be Awarded to Wife**

The Wife is awarded as her separate property the property set forth in Exhibit A, which is attached to the Findings of Fact and Conclusions of Law and incorporated by reference as part of this decree.

### **3.4 Liabilities to be Paid by Husband**

Husband shall pay the community or separate liabilities set forth in Exhibit A, which is attached to the Findings of Fact and Conclusions of Law and incorporated by reference as part of this decree.

Unless otherwise provided in this Decree, Husband shall pay all liabilities incurred by him since the date of separation.

### **3.5 Liabilities to be Paid by the Wife**

Wife shall pay the community or separate liabilities set forth in Exhibit A, which is attached to the Findings of Fact and Conclusions of Law and incorporated by reference as part of this decree.

Unless otherwise provided in this Decree, Wife shall pay all liabilities incurred by her since the date of separation.

### **3.6 Hold Harmless Provision**

Each party shall hold the other party harmless from any collection action relating to separate or community liabilities set forth on Exhibit A to the Findings and Conclusions, including reasonable attorney's fees and costs incurred in defending against any attempts to collect an obligation of the other party.

### 3.7 Maintenance

Does not apply.

### 3.8 Continuing Restraining Order

A continuing restraining order is entered as follows:

Husband is restrained and enjoined from disturbing the peace of the other party.

Husband is restrained and enjoined from going onto the grounds of or entering the home, work place, or school of the other party, or the school of the following named children: Alexa Green

Husband is restrained and enjoined from knowingly coming within or knowingly remaining within (distance) 500 feet of the home, work place, or school of the other party, or the school of these children: Alexa Green.

Kenneth Green is restrained and enjoined from molesting, assaulting, harassing, or stalking Cheryl Green or Alexa Green.

***Violation of a Restraining Order in Paragraph 3.8 With Actual Knowledge of its Terms Is a Criminal Offense Under Chapter 26.50 RCW and Will Subject the Violator to Arrest. RCW 26.09.060.***

**Clerk's Action.** The clerk of the court shall forward a copy of this order, on or before the next judicial day, to: City of Seattle law enforcement agency which shall enter this order into any computer-based criminal intelligence system available in this state used by law enforcement agencies to list outstanding warrants. (A law enforcement information sheet must be completed by the party or the party's attorney and provided with this order before this order will be entered into the law enforcement computer system.)

#### **Service**

The protected party must arrange for service of this order on the restrained party. File the original Return of Service with the clerk and provide a copy to the law enforcement agency listed above.

#### **Expiration**

This restraining order expires on: (month/day/year) August 25, 2012, unless sooner modified or terminated by court order.

#### **Full Faith and Credit**

Pursuant to 18 U.S.C. § 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory, and any tribal land within the United States shall accord full faith and credit to the order.

### 3.9 Protection Order

Does not apply.

**3.10 Jurisdiction Over the Children**

The court has jurisdiction over the child as set forth in the Findings and Conclusions.

**3.11 Parenting Plan**

The parties shall comply with the Parenting Plan signed by the court on this date. The Parenting Plan signed by the court is approved and incorporated as part of this decree.

**3.12 Child Support**

Child support shall be paid in accordance with the Order of Child Support signed by the court on this date. This order is incorporated as part of this decree.

**3.13 Attorney Fees, Other Professional Fees and Costs**

Does not apply.

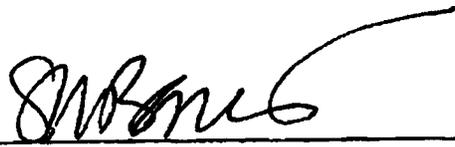
**3.14 Name Changes**

Does not apply.

**3.15 Other**

Dated: \_\_\_\_\_

8-26-10

  
\_\_\_\_\_  
Judge/Commissioner

# **EXHIBIT B**

**Superior Court of Washington  
County of King**

*In re* the Marriage of:

Kenneth Green,  
Petitioner,  
and  
Cheryl Green,  
Respondent.

No. 09-3-04975-45EA

**Findings of Fact and  
Conclusions of Law  
(Marriage)  
(FNFL)**

**I. Basis for Findings**

The findings are based on trial, at which the following people appeared: Petitioner/Husband, Petitioner's Lawyer Young, Respondent/Wife, and Respondent's Lawyer Saxion.

**II. Findings of Fact**

**2.1 Residency of Petitioner**

Wife is a resident of the state of Washington.

**2.2 Notice to the Respondent**

Wife appeared, responded or joined in the petition.

**2.3 Basis of Personal Jurisdiction Over the Respondent**

The parties lived in Washington during their marriage and continue to reside in this state.

**2.4 Date and Place of Marriage**

The parties were married on February 4, 1995, in Seattle, WA.

**2.5 Status of the Parties**

Husband and Wife separated on April 21, 2009.

**2.6 Status of Marriage**

The marriage is irretrievably broken and at least 90 days have elapsed since the date the petition was filed and since the date the summons was served or the respondent joined.

**2.7 Separation Contract or Prenuptial Agreement**

There is no written separation contract or prenuptial agreement.

**2.8 Community Property**

The parties have real or personal community property as set forth in Exhibit A, which is attached and incorporated by reference as part of these findings.

**2.9 Separate Property**

The parties have separate property as set forth in Exhibit A, which is attached and incorporated by reference as part of these findings.

**2.10 Community Liabilities**

The parties have incurred community liabilities as set forth in Exhibit A, which is attached and incorporated by reference as part of these findings.

**2.11 Separate Liabilities**

The husband has incurred separate liabilities as set forth in Exhibit A, which is attached and incorporated by reference as part of these findings.

The wife has incurred separate liabilities as set forth in Exhibit A, which is attached and incorporated by reference as part of these findings.

**2.12 Maintenance**

Maintenance was not requested.

**2.13 Continuing Restraining Order**

A continuing restraining order is necessary because the parties cannot communicate without resulting accusations of criminal behavior.

A continuing restraining order shall not implicate Husband's relationship to their child, as deemed appropriate by a reconciliation counselor retained by Husband.

**2.14 Protection Order**

Does not apply.

**2.15 Fees and Costs**

There is no award of fees or costs.

**2.16 Pregnancy**

The wife is not pregnant.

**2.17 Dependent Children**

The parties have one child, Alexa, age 15.

## **Jurisdiction Over the Children**

This court has jurisdiction over the child this state is the home state of the child. The child, Alexa, lived in Washington with a parent or a person acting as a parent for at least six consecutive months immediately preceding the commencement of this proceeding.

### **2.18 Parenting Plan**

The parenting plan signed by the court on this date is approved and incorporated as part of these findings.

### **2.19 Child Support**

The child is in need of support and child support should be set pursuant to the Washington State Child Support Schedule. The Order of Child Support signed by the court on this date, and the child support worksheet, which has been approved by the court, are incorporated by reference in these findings.

### **2.20 Other**

Father has advanced degrees and a history of progressively more responsible employment. His record of employment inquiries shows a total of only two in-person contacts over the last 18 months. He is voluntarily unemployed.

## **III. Conclusions of Law**

### **3.1 Jurisdiction**

The court has jurisdiction to enter a decree in this matter.

### **3.2 Granting a Decree**

The parties should be granted a decree.

### **3.3 Pregnancy**

Does not apply.

### **3.4 Disposition**

The court should determine the marital status of the parties, make provision for a parenting plan for any minor children of the marriage, make provision for the support of any minor child of the marriage entitled to support, consider or approve provision for maintenance of either spouse, make provision for the disposition of property and liabilities of the parties, make provision for the allocation of the children as federal tax exemptions, make provision for any necessary continuing restraining orders, and make provision for the change of name of any party. The distribution of property and liabilities as set forth in the decree is fair and equitable.

### **3.5 Continuing Restraining Order**

A continuing restraining order should be entered.

### **3.6 Protection Order**

Does not apply.

### **3.7 Attorney Fees and Costs**

Does not apply.

**3.8 Other**

The Order of Child Support assumes income imputed to Husband based upon his most recent work history.

Dated: 8-26-10

  
\_\_\_\_\_  
Judge/Commissioner

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**FILED**  
KING COUNTY, WASHINGTON  
AUG 31 2010  
SUPERIOR COURT CLERK  
BY JOSEPH MASON  
DEPUTY

**SUPERIOR COURT OF THE STATE OF WASHINGTON  
KING COUNTY**

GREEN,  
  
Petitioner,  
  
vs.  
  
GREEN,  
  
Respondent.

CAUSE NO. 09-3-04975-4 SEA  
  
EXHIBIT A

Attached and filed herewith is Exhibit A to the Findings of <sup>Fact</sup> and Conclusions  
of Law. DW  
8-30-10

DATED this 30 day of August, 2010.

  
Suzanne M. Barnett, Judge

**ORIGINAL**

**CORRESPONDENCE**

Marriage of Green  
09-3-04975-4 SEA

**EXHIBIT A**

To Findings of Fact and Conclusions of Law

Description	Char	Value	Adj.	Husband	Wife
<b>Assets<sup>1</sup></b>					
Res. Real Estate	CP	\$ 290,000	Two mort's: \$ (172,425)	\$ 117,575	
Civil Service Retirement <sup>2</sup>	mixed	466,637	PV of W's SS: (80,847)	-	-
	CP	192,275			\$ 192,275
	W-SP	193,875			-
TSP	CP	6,967			6,967
Fidelity IRA	CP	5,348		5,348	
WF retirement	CP	1,331		1,331	
Sageco severance	CP	4,280		4,280	
2000 Grand Am	CP	3,015		3,015	
2003 Ford Ranger	CP	4,325		4,325	
Nissan	CP	10,000	(16,900)		(6,900)
Chase bank account 6473	CP	48,000		48,000	
Verity Credit Union accounts	CP	250			250
<b>Liabilities</b>					
Home mortgages	CP			100%	
Student loan	W-SP	\$ 2,783			100%
Orthodontia <sup>3</sup>	CP	4,000		50%	50%
Visa account	W-SP	8,237			100%
Federal Income Tax Liability <sup>4</sup>	CP			50%	50%
				\$ 183,874	\$ 188,992

<sup>1</sup> Values are as of the date of separation, April, 2009

<sup>2</sup> The total present value of Wife's civil service retirement account is \$466,637, reduced by \$80,487, which is the present value of Wife's foregone Social Security Benefit. The pension portion of Wife's retirement account is \$386,150, of which \$193,875 is Wife's separate property and \$192,275 is community property.

<sup>3</sup> Wife shall have a judgment against Husband in the amount of \$2,000 to defray the costs of orthodontia for their daughter.

<sup>4</sup> To the extent Wife has 2009 federal tax liability that is greater than 50% of the amount owed had the parties filed a joint return, Husband shall pay Wife 50% of the incremental difference. If Husband's 2009 tax liability was higher as a result of filing a separate return, he is not entitled to any reimbursement from Wife.

# **EXHIBIT C**

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING**

In re the Marriage of:

**KENNETH GREEN,**  
Petitioner,  
and

**CHERYL GREEN,**  
Respondent.

NO. 09-3-04975-4SEA

**ORDER OF CHILD SUPPORT  
Final (FOCS)**

**Clerk's Action Required**

**I. JUDGMENT SUMMARY**

Does not apply.

**1.2 Judgment Summary for Medical Support**

Does not apply.

**II. BASIS**

**2.1 TYPE OF PROCEEDING.**

This order is entered under a decree of dissolution of marriage:

**2.2 CHILD SUPPORT WORKSHEET.**

The child support worksheet which has been approved by the court is attached to this order and is incorporated by reference or has been initialed and filed separately and is incorporated by reference.

**2.3 OTHER:**

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3 **III. FINDINGS AND ORDER**

4 IT IS ORDERED that:

5 **3.1 CHILDREN FOR WHOM SUPPORT IS REQUIRED.**

6 Name (first/last)                      Age  
7 Alexa Green                                      15

8 **3.2 PERSON PAYING SUPPORT (OBLIGOR).**

9 Name (first/last):                      Kenneth Green  
10 Birth date:                                      November 10, 1952  
11 Service Address:                              3924 S. Sullivan St., Seattle, WA 98118

12 THE OBLIGOR PARENT MUST IMMEDIATELY FILE WITH THE COURT AND  
13 THE WASHINGTON STATE CHILD SUPPORT REGISTRY, AND UPDATE AS  
14 NECESSARY, THE CONFIDENTIAL INFORMATION FORM REQUIRED BY RCW  
26.23.050.

15 THE OBLIGOR PARENT SHALL UPDATE THE INFORMATION REQUIRED BY  
16 PARAGRAPH 3.2 PROMPTLY AFTER ANY CHANGE IN THE INFORMATION. THE  
17 DUTY TO UPDATE THE INFORMATION CONTINUES AS LONG AS ANY  
18 SUPPORT REMAINS DUE UNDER THIS ORDER.

19 For purposes of this Order of Child Support, the support obligation is based upon the  
20 following income:

21 The income of the obligor is imputed at \$4,427.19 because the obligor is voluntarily  
22 unemployed.

23 The amount of [imputed] income is based on the following information in order of  
24 priority. The court has used the first option for which there is information: Petitioner's  
25 admission of potential earning capacity, as stated in his Declaration dated November 4,  
2009.

26 **3.3 PERSON RECEIVING SUPPORT (OBLIGEE):**

27 Name (first/last):                      Cheryl Green  
28 Birth date:                                      May 6, 1961  
29 Service Address:                              P.O. Box 84617, Seattle, WA 98124

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3 THE OBLIGEE MUST IMMEDIATELY FILE WITH THE COURT AND THE  
4 WASHINGTON STATE CHILD SUPPORT REGISTRY AND UPDATE AS  
5 NECESSARY THE CONFIDENTIAL INFORMATION FORM REQUIRED BY RCW  
6 26.23.050.

7 THE OBLIGEE SHALL UPDATE THE INFORMATION REQUIRED BY  
8 PARAGRAPH 3.3 PROMPTLY AFTER ANY CHANGE IN THE INFORMATION.  
9 THE DUTY TO UPDATE THE INFORMATION CONTINUES AS LONG AS ANY  
10 MONTHLY SUPPORT REMAINS DUE OR ANY UNPAID SUPPORT DEBT  
11 REMAINS DUE UNDER THIS ORDER.

12 Actual Monthly Net Income: \$4,684.19

13 The obligor may be able to seek reimbursement for day care or special child rearing  
14 expenses not actually incurred. RCW 26.19.080.

15 **3.4 SERVICE OF PROCESS.**

16 **SERVICE OF PROCESS ON THE OBLIGOR AT THE ADDRESS REQUIRED  
17 BY PARAGRAPH 3.2 OR ANY UPDATED ADDRESS, OR ON THE OBLIGEE  
18 AT THE ADDRESS REQUIRED BY PARAGRAPH 3.3 OR ANY UPDATED  
19 ADDRESS, MAY BE ALLOWED OR ACCEPTED AS ADEQUATE IN ANY  
20 PROCEEDING TO ESTABLISH, ENFORCE OR MODIFY A CHILD SUPPORT  
21 ORDER BETWEEN THE PARTIES BY DELIVERY OF WRITTEN NOTICE TO  
22 THE OBLIGOR OR OBLIGEE AT THE LAST ADDRESS PROVIDED.**

23 **3.5 TRANSFER PAYMENT.**

24 The obligor parent shall pay the following amounts per month for the following children:

<u>Name</u>	<u>Amount</u>
Alexa Green	\$731.92

25 TOTAL MONTHLY TRANSFER AMOUNT . \$731.92

THE OBLIGOR PARENT'S PRIVILEGES TO OBTAIN OR MAINTAIN A  
LICENSE, CERTIFICATE, REGISTRATION, PERMIT, APPROVAL, OR  
OTHER SIMILAR DOCUMENT ISSUED BY A LICENSING ENTITY  
EVIDENCING ADMISSION TO OR GRANTING AUTHORITY TO ENGAGE IN  
A PROFESSION, OCCUPATION, BUSINESS, INDUSTRY, RECREATIONAL

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**PURSUIT, OR THE OPERATION OF A MOTOR VEHICLE MAY BE DENIED OR MAY BE SUSPENDED IF THE OBLIGOR PARENT IS NOT IN COMPLIANCE WITH THIS SUPPORT ORDER AS PROVIDED IN CHAPTER 74.20A REVISED CODE OF WASHINGTON.**

**3.6 STANDARD CALCULATION.**

\$731.92 per month. (See Worksheet line 17.)

**3.7 REASONS FOR DEVIATION FROM STANDARD CALCULATION.**

The child support amount ordered in paragraph 3.5 does not deviate from the standard calculation.

**3.8 REASONS WHY REQUEST FOR DEVIATION WAS DENIED.**

A deviation was not requested.

**3.9 STARTING DATE AND DAY TO BE PAID.**

Starting Date: June 1, 2010  
Day(s) of the month support is due: 1<sup>st</sup> of each month

**3.10 INCREMENTAL PAYMENTS.**

Does not apply.

**3.11 MAKING SUPPORT PAYMENTS.**

Enforcement and collection: The Division of Child Support (DCS) provides support enforcement services for this case because: a parent has signed the application for services from DCS on the last page of this support order.

Support payments shall be made to:

Washington State Support Registry  
P. O. Box 45868  
Olympia, WA 98504  
Phone: 1-800-922-4306 or 1-800-442-5437

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3 A party required to make payments to the Washington State Support Registry will not  
4 receive credit for a payment made to any other party or entity. The obligor parent shall keep  
5 the registry informed whether he or she has access to health insurance coverage at  
6 reasonable cost and, if so, to provide the health insurance policy information.

7 Any time the Division of Child Support is providing support enforcement services under  
8 RCW 26.23.045, or if a party is applying for support enforcement services by signing the  
9 application form on the bottom of the support order, the receiving parent might be  
10 required to submit an accounting of how the support, including any cash medical support,  
11 is being spent to benefit the child.

### 12 3.12 WAGE WITHHOLDING ACTION.

13 Withholding action may be taken against wages, earnings, assets, or benefits, and liens  
14 enforced against real and personal property under the child support statutes of this or any  
15 other state, without further notice to the obligor parent at any time after entry of this order  
16 unless an alternative provision is made below:

17 [If the court orders immediate wage withholding in a case where Division of Child  
18 Support does not provide support enforcement services, a mandatory wage assignment  
19 under Chapter 26.18 RCW must be entered and support payments must be made to the  
20 Support Registry.]

21 Wage withholding, by notice of payroll deduction or other income withholding action  
22 under Chapter 26.18 RCW or Chapter 74.20A RCW, without further notice to the  
23 obligor, is delayed until a payment is past due, because the obligor is current in his  
24 support obligation.

### 25 3.13 TERMINATION OF SUPPORT.

Until the child reach the age of 18 or as long as the child remains enrolled in high school,  
whichever occurs last, except as otherwise provided below in Paragraph 3.14.

### 3.14 POST SECONDARY EDUCATIONAL SUPPORT.

In the event the child elects to continue her education past high school, each parent shall  
be obligated to provide financial assistance based on their child support worksheets  
comparable income percentages then in effect, and the ability of the child to assist in such  
expenses, while the child is attending an institution of higher education on a substantially  
full-time basis. The child shall seek out and obtain available scholarships, grants, work-  
study, part-time employment and other reasonable means of helping defray such higher

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3 education costs. In no event shall the combined parental responsibility for higher  
4 education expenses exceed the amount normally charged in the year of each child's  
5 attendance at the University of Washington for a full-time residential, on campus student  
6 for room, board, tuition, and supplies. Off campus housing contributions specifically  
7 exclude payments if the child is residing with one parent or the other. Those  
8 contributions would be considered as a separate post majority support obligation  
9 reviewed on the family law motions calendar. Parental contributions for higher education  
10 shall be made directly to the student or, at the parent's discretion, directly to the provider  
11 of the higher education services or supplies. If the child resides with one of the parents  
12 the court may direct that the parent making the support transfer payments make the  
13 payments to the child or to the parent who has been receiving the support transfer  
14 payments. Determination of the parental obligation for higher education expenses shall  
15 be enforceable by motion for clarification to the Family Law Motion Department and  
16 shall not require a Petition for Modification. The parties' consent to the continued  
17 jurisdiction of the Family Court for purposes of determining the parent's obligation.

18 **3.15 PAYMENT FOR EXPENSES NOT INCLUDED IN THE TRANSFER PAYMENT.**

19 Does not apply because all payments, except medical, are included in the transfer  
20 payment.

21 **3.16 PERIODIC ADJUSTMENT.**

22 The first adjustment shall be effective June 1, 2012. The parties agree to submit to each  
23 other every other year, commencing April 30, 2012, photocopies of the previous two  
24 years individual and business tax returns including all schedules, and W-2 forms and  
25 1099s, and K1's, no later than April 30 of that year, and the newly adjusted support shall  
be effective June 1, to determine whether said support order is adequately meeting the  
needs of the child. Additionally, the parties shall exchange year to date income  
information prepared by the parties' respective employers or, if self-employed, records  
of the business sufficient to determine the income and expenses of the business. If a  
parent has requested an extension for filing his/her tax return, he/she will provide the  
other parent with all income information needed to prepare the tax return. The parties  
shall then forthwith make an adjustment of child support and special expense contribution  
based upon the relative incomes of the parties and the Washington State Child Support  
Schedule then in effect. Both parties shall cooperate fully and use their best efforts in  
preparing the appropriate support adjustment order and worksheets and shall promptly  
sign and submit the same for the entry into the Court record. If an agreement to adjust  
the child support cannot be reached, either party may note a Motion for Adjustment of  
Child Support on the Family Law Motions Calendar.

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3 **3.17 INCOME TAX EXEMPTIONS.**

4 Tax exemptions for the child shall be allocated as follows: To the mother every year.

5 The parents shall sign the federal income tax dependency exemption waiver.

6 **3.18 MEDICAL INSURANCE FOR THE CHILDREN LISTED IN PARAGRAPH 3.1.**

7 Each parent shall provide health insurance coverage for the child listed in paragraph 3.1,  
8 as follows:

9 **3.18.1 Health Insurance (complete sections B and C, Section D applies in all cases.)**

10 Findings about insurance:

11 25% of Cheryl Green's basic support obligation is \$193.52, (from line 19 of the  
12 worksheets). 25% of Kenneth Green's basic support obligation is \$182.98, from  
13 line 19 of the worksheets);

14 Insurance coverage for the child is available and accessible to the mother at  
15 unknown cost (child's portion of the premium, only);

16 The court finds that the mother has better coverage considering the needs of the  
17 child, the cost and extent of each parent's coverage, and the accessibility of the  
18 coverage.

18 AND

19 Parties' obligations:

20 (i) Applies to: Cheryl Green

21 (a) This parent shall provide health insurance coverage for the child that is available  
22 through employment or is union-related so long as the cost of such coverage does  
23 not exceed 25% of this parent's basic support obligation.

24 (i) Applies to: Kenneth Green

25 (d) The other parent in (C)(i) above, is providing health insurance coverage. This  
parent shall pay \$\_\_\_\_\_ which is this parent's proportionate share of the  
premium. This amount does not exceed 25% of his basis support obligation.  
This payment is only required if he is not providing insurance as described above.

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3 D. Both parties' obligation:

4 The parents shall maintain health insurance coverage, if available for the child listed  
5 in paragraph 3.1, until further order of the court or until health insurance is no longer  
6 available through the parents' employer or union and no conversion privileges exist  
7 to continue coverage following termination of employment.

8 A parent who is required under this order to provide health insurance coverage is  
9 liable for any covered health care costs for which that parent receives direct payment  
10 from an insurer.

11 A parent who is required under this order to provide health insurance coverage shall  
12 provide proof that such coverage is available or not available within 20 days of the  
13 entry of this order to the physical custodian or the Washington State Support  
14 Registry if the parent has been notified or ordered to make payments to the  
15 Washington State Support Registry.

16 If proof that health insurance coverage is available or not available is not provided  
17 within 20 days, the obligee or the Department of Social and Health Services may  
18 seek direct enforcement of the coverage through the obligor's employer or union  
19 without further notice to the obligor as provided under Chapter 26.18 RCW.

20 **3.18.2 Change of Circumstances and Enforcement**

21 A parent required to provide health insurance coverage must notify both the Division of  
22 Child Support and the other parent when coverage terminates.

23 If the parents' circumstances change, or if the court has not specified how medical  
24 support shall be provided, the parents' medical support obligations will be enforced as  
25 provided in RCW 26.18.170. If a parent does not provide proof of accessible coverage  
for the child through private insurance, a parent may be required to satisfy his or her  
medical support obligation by doing one of the following, listed in order of priority:

- 1) Providing or maintaining health insurance coverage through the parent's employment or union at a cost not to exceed 25% of that parent's basic support obligation;
- 2) Contributing the parent's proportionate share of a monthly premium being paid by the other parent for health insurance coverage for the child listed in paragraph 3.1 of this order, not to exceed 25% of the obligated parent's basic support obligation; or

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3 3) Contributing the parent's proportionate share of a monthly premium paid by  
4 the state if the child receives state-financed medical coverage through DSHS  
under RCW 74.09 for which there is an assignment.

5 A parent seeking to enforce the obligation to provide health insurance coverage may  
6 apply for support enforcement services from the Division of Child Support; file a motion  
7 for contempt (use form WPF DRPSCU 05.0100, Motion/Declaration for an Order to  
Show Cause re Contempt); or file a petition.

8 **3.19 UNINSURED MEDICAL EXPENSES.**

9 Both parents have an obligation to pay their share of uninsured medical expenses. Kenneth  
10 Green shall pay 49% of uninsured medical expenses (unless stated otherwise, the  
11 petitioner's proportional share of income from the Worksheet, line 6) and Cheryl Green  
12 shall pay 51% of uninsured medical expenses (unless stated otherwise, the respondent's  
proportional share of income from the Worksheet, line 6)

13 **3.20 BACK CHILD SUPPORT.**

14 No back child support is owed at this time.

15 No back interest is owed at this time.

16 **3.21 PAST DUE UNPAID MEDICAL SUPPORT**

17 No past due unpaid medical support is owed at this time.

18 No back interest is owed at this time.

19 **3.22 OTHER UNPAID OBLIGATIONS**

20 No other obligations are owed at this time.

21  
22  
23 Dated: 8.26-10

24   
25 JUDGE/COMMISSIONER

*See Ex A to  
Findings and Conclusions  
re orthodontia. JMB  
8-26-10*

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Presented by:

Approved for entry:  
Notice of presentation waived:

LORI M. SAXION, WSBA #20262  
Attorney for Respondent

DAN R. YOUNG WSBA #12020  
Attorney for Petitioner

I apply for full support enforcement services from the DSHS Division of Child Support (DCS).  
(Note: If you never received TANF, tribal TANF, or AFDC, an annual \$25 fee applies if over \$500  
is disbursed on a case, unless the fee is waived by DCS).

CHERYL GREEN, Respondent

## Washington State Child Support Schedule Worksheets

Proposed by  RESPONDENT  State of WA  Other (CSWP)  
Or,  Signed by the Judicial/Reviewing Officer. (CSW)

Mother: CHERYL GREEN

Father: KENNETH GREEN

County: KING

Case No.: 09-3-04975-4 SEA

### Child Support Order Summary Report

***This section must be completed for all Worksheets signed by the judicial/reviewing officer.***

A. The order <input type="checkbox"/> does <input checked="" type="checkbox"/> does not replace a prior court or administrative order
B. The Standard Calculation listed on line 17 of the Worksheet for the paying parent is: \$731.92.
C. The Transfer Amount ordered by the Court from the Order of Child Support is: \$731.92 to be paid by <input type="checkbox"/> mother <input checked="" type="checkbox"/> father.
D. The Court deviated (changed) from the Standard Calculation for the following reasons: <input checked="" type="checkbox"/> Does not apply <input type="checkbox"/> Nonrecurring income <input type="checkbox"/> Sources of income and tax planning <input type="checkbox"/> Split custody <input type="checkbox"/> Residential schedule (including shared custody) <input type="checkbox"/> Child(ren) from other relationships for whom the parent owes support <input type="checkbox"/> High debt not voluntarily incurred and high expenses for the child(ren) <input type="checkbox"/> Other (please describe):
E. Income for the Father is <input checked="" type="checkbox"/> imputed <input checked="" type="checkbox"/> actual income. Income for the Mother is <input type="checkbox"/> imputed <input checked="" type="checkbox"/> actual income. Income was imputed for the following reasons: The Father is voluntarily unemployed.
F. If applicable: <input type="checkbox"/> All health care, day care and special child rearing expenses are included in the Worksheets in Part III.

### Worksheets

Child(ren) and Age(s): Alexa Green, 15			
Part I: Income (see Instructions, page 6)			
1. Gross Monthly Income		Father	Mother
a. Wages and Salaries		\$5,416.66	\$5,917.22
b. Interest and Dividend Income		-	-
c. Business Income		-	-
d. Maintenance Received		-	-
e. Other Income		-	-
f. Imputed Income		-	-
g. Total Gross Monthly Income (add lines 1a through 1f)		\$5,416.66	\$5,917.22
2. Monthly Deductions from Gross Income			
a. Income Taxes (Federal and State) Tax Year: Manual		\$575.10	\$639.52
b. FICA (Soc. Sec. + Medicare) / Self-Employment Taxes		\$414.37	\$74.27
c. State Industrial Insurance Deductions		-	\$69.64
d. Mandatory Union/Professional Dues		-	\$39.72
e. Mandatory Pension Plan Payments		-	\$409.88
f. Voluntary Retirement Contributions		-	-
g. Maintenance Paid		-	-
h. Normal Business Expenses		-	-
i. Total Deductions from Gross Income (add lines 2a through 2h)		\$989.47	\$1,233.03
3. Monthly Net Income (line 1g minus 2i)		\$4,427.19	\$4,684.19
4. Combined Monthly Net Income (line 3 amounts combined)		\$9,111.38	
5. Basic Child Support Obligation (Combined amounts →)			
Alexa Green     \$1506.00			
-			
-			
-			
		\$1,506.00	
6. Proportional Share of Income (each parent's net income from line 3 divided by line 4)		.486	.514
Part II: Basic Child Support Obligation (see Instructions, page 8)			
7. Each Parent's Basic Child Support Obligation without consideration of low income limitations (Each parent's Line 6 times Line 5.)		\$731.92	\$774.08
8. Calculating low income limitations: (Complete those that apply.)			
Self-Support Reserve: (125% of the Federal Poverty Guideline.)		\$1,128.00	
a. Combined Net Income Less Than \$1,000: If line 4 is less than \$1000, then for each parent enter the presumptive \$50 per child.		-	-
b. Monthly Net Income Less Than Self-Support Reserve: If a parent's monthly net income on line 3 is less than the self-support reserve, then for that parent enter the presumptive \$50 per child.		-	-
c. Monthly Net Income Greater Than Self-Support Reserve: For each parent subtract the self-support reserve from line 3. If that amount is less than line 7, then enter that amount or the presumptive \$50 per child, whichever is greater.		-	-
9. Each parent's basic child support obligation after calculating applicable limitations. For each parent, enter the lowest amount from line 7, 8a, 8b or 8c.		\$731.92	\$774.08

<b>Part III: Health Care, Day Care, and Special Child Rearing Expenses (see Instructions, page 8)</b>		
<b>10. Health Care Expenses</b>	<b>Father</b>	<b>Mother</b>
a. Monthly Health Insurance Paid for Child(ren)	-	-
b. Uninsured Monthly Health Care Expenses Paid for Child(ren)	-	-
c. Total Monthly Health Care Expenses (line 10a plus line 10b)	-	-
d. Combined Monthly Health Care Expenses (line 10c amounts combined)	-	-
<b>11. Day Care and Special Child Rearing Expenses</b>		
a. Day Care Expenses	-	-
b. Education Expenses	-	-
c. Long Distance Transportation Expenses	-	-
d. Other Special Expenses (describe)	-	-
	-	-
	-	-
e. Total Day Care and Special Expenses (Add lines 11a through 11d)	-	-
12. Combined Monthly Total Day Care and Special Expenses (line 11e amounts Combined)	-	-
13. Total Health Care, Day Care, and Special Expenses (line 10d plus line 12)	-	-
14. Each Parent's Obligation for Health Care, Day Care, and Special Expenses (multiply each number on line 6 by line 13)	-	-
<b>Part IV: Gross Child Support Obligation</b>		
15. Gross Child Support Obligation (line 9 plus line 14)	<b>\$731.92</b>	<b>\$774.08</b>
<b>Part V: Child Support Credits (see Instructions, page 9)</b>		
<b>16. Child Support Credits</b>		
a. Monthly Health Care Expenses Credit	-	-
b. Day Care and Special Expenses Credit	-	-
c. Other Ordinary Expenses Credit (describe)	-	-
	-	-
d. Total Support Credits (add lines 16a through 16c)	-	-
<b>Part VI: Standard Calculation/Presumptive Transfer Payment (see Instructions, page 9)</b>		
17. Standard Calculation (line 15 minus line 16d or \$50 per child whichever is greater)	<b>\$731.92</b>	<b>\$774.08</b>
<b>Part VII: Additional Informational Calculations</b>		
18. 45% of each parent's net income from line 3 (.45 x amount from line 3 for each parent)	<b>\$1,992.24</b>	<b>\$2,107.89</b>
19. 25% of each parent's basic support obligation from line 9 (.25 x amount from line 9 for each parent)	<b>\$182.98</b>	<b>\$193.52</b>

<b>Part VIII: Additional Factors for Consideration (see Instructions, page 9)</b>		
<b>20. Household Assets</b> (List the estimated value of all major household assets.)	<b>Father's Household</b>	<b>Mother's Household</b>
a. Real Estate	-	-
b. Investments	-	-
c. Vehicles and Boats	-	-
d. Bank Accounts and Cash	-	-
e. Retirement Accounts	-	-
f. Other: (describe)	-	-
	-	-
	-	-
	-	-
<b>21 Household Debt</b> (List liens against household assets, extraordinary debt.)		
a.	-	-
b.	-	-
c.	-	-
d.	-	-
e.	-	-
f.	-	-
<b>22. Other Household Income</b>		
<b>a. Income Of Current Spouse or Domestic Partner</b> (If not the other parent of this action)		
Name	-	-
Name	-	-
<b>b. Income Of Other Adults in Household</b>		
Name	-	-
Name	-	-
<b>c. Gross Income from overtime or from second jobs the party is asking the court to exclude per Instructions, page 10</b>	-	-
<b>d. Income Of Child(ren) (if considered extraordinary)</b>		
Name	-	-
Name	-	-
<b>e. Income From Child Support</b>		
Name	-	-
Name	-	-
<b>e. Income From Assistance Programs</b>		
Program	-	-
Program	-	-
<b>f. Other Income (describe)</b>		
	-	-
	-	-
<b>23. Non-Recurring Income (describe)</b>		
	-	-
	-	-

24. Child Support Owed, Monthly, for Biological or Legal Child(ren)		Father's Household	Mother's Household
Name/age:	Paid <input type="checkbox"/> Yes <input type="checkbox"/> No	-	-
Name/age:	Paid <input type="checkbox"/> Yes <input type="checkbox"/> No	-	-
Name/age:	Paid <input type="checkbox"/> Yes <input type="checkbox"/> No	-	-
25. Other Child(ren) Living In Each Household (First name(s) and age(s))			

26. Other Factors For Consideration (attach additional pages as necessary)

**Signature and Dates**

I declare, under penalty of perjury under the laws of the State of Washington, the information contained in these Worksheets is complete, true, and correct.

\_\_\_\_\_  
Mother's Signature

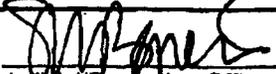
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Father's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
City

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Date

\_\_\_\_\_  
City

  
\_\_\_\_\_  
Judicial/Reviewing Officer

8-26-10  
\_\_\_\_\_  
Date

Worksheet certified by the State of Washington Administrative Office of the Courts.

Photocopying of the worksheet is permitted.