

68507-4

68507-4

No. 68507-4-1

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

In re the Marriage of

SARA STEPHENSON  
Appellant

and

SHATA STEPHENSON  
Respondent

NOV 20 PM 1:23  
COURT OF APPEALS  
STATE OF WASHINGTON

ON REVIEW FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

BRIEF OF RESPONDENT

CARL T. EDWARDS  
Attorney for Respondent  
419 Occidental Ave. S., #407  
Seattle, WA 98104  
(206) 467-6400

## TABLE OF CONTENTS

|      |  |    |
|------|--|----|
| I.   | RESTATEMENT OF ISSUES.....   | 1  |
| II.  | RESTATEMENT OF FACTS.....  | 2  |
| A.   | The Trial Court's Finding That Both Parents Provide Equal Amounts Of Residential Care For Their Children Is Undisputed On Appeal.....  | 2  |
| B.   | The Trial Court's Division of Property and Award of Maintenance Left The Wife In A Substantially Stronger Financial Position Than The Husband.....   | 2  |
| C.   | The Trial Court Concluded That There Was No Basis For Designating One Parent As The Support Obligees For Purposes Of Awarding Child Support Based On The Standard Calculation Because Neither Parent Was A Primary Residential Parent..... | 4  |
| D.   | The Trial Court Set Child Support By Allocating The Basic Support Obligation Between The Two Households Based On Each Parent's Proportional Share of Income.....   | 5  |
| III. | ARGUMENT.....  | 7  |
| A.   | The Determination of Child Support Is Subject To The Trial Court's Discretion.....   | 7  |
| B.   | Neither The Child Support Statute Nor Case Law Provides Authority for Determining Which Parent Should Receive Support In The Context Of A 50/50 Residential Schedule.....  | 8  |
| C.   | In The Context of a 50/50 Shared Residential Schedule, Awarding Child Support To One Parent Based On The Standard Calculation Can Result In Serious Inequities Because Both Parents Have Equivalent Residential Burdens.....               | 11 |
| D.   | The Trial Court Acted Within Its Discretion By Allocating The Basic Support Obligation Equitably Between The Two Parents' Households.....  | 14 |

E. The New York Case Cited In Appellant's Brief Is Off Point Because It Does Not Involve A 50/50 Shared Residential Schedule.....19

F. The Court Should Deny The Mother's Request For Fees Because She Has No Need And The Father Has No Ability To Pay In Light Of The Trial Court's Division of Property and Maintenance Award.....20

IV. CONCLUSION.....20

**TABLE OF AUTHORITIES**

**Washington Cases**

***M.M.G. v. Graham***, 159 Wn.2d 623, 152 P.3d 1005  
(2007).....8, 11, 12, 16, 18

***Marriage of Arvey***, 77 Wn.App. 817, 894 P.2d 1346  
(1995).....8, 11

***Marriage of Booth***, 114 Wn.2d 772, 791 P.2d 519  
(1990).....7

***Marriage of Daubert & Johnson***, 124 Wn. App. 483, 99  
P.3d 401 (2004), reversed on other grounds by  
Marriage of McCausland, 159 Wn.2d 607, 152 P.3d  
1013 (2007).....13

***Marriage of Holmes***, 128 Wn.App. 727, 117 P.3d 370  
(2005).....9, 10, 12

***Marriage of Oakes***, 71 Wn.App. 646, 861 P.2d 1065  
(1993).....8, 9, 14, 15, 16

***Marriage of Shui/Rose***, 132 Wn. App. 568, 125 P.3d 180  
(2005), *rev. denied*, 158 Wn.2d 1017 (2006).....7

**Statutes**

RCW 26.19.001.....15

RCW 26.19.011.....15, 16

RCW 26.19.075.....14, 17

**Other Authorities**

House Journal, 6/27/91, at 52<sup>nd</sup> Leg., Reg. Sess., at  
4320 (Wash. 1991).....14

**Cases From Other Jurisdictions**

***Bast v. Rossoff***, 91 N.Y.2d 723, 697 N.E.2d 1009  
(1988).....19

## **I. RESTATEMENT OF ISSUES**

1. Where the parenting plan provided for the children to spend equal amounts of residential time with each parent, did the trial court act within its discretion by ordering the father to pay support to the mother in an amount that equitably allocates the Basic Support Obligation of the Washington Child Support Schedule between the two parents' households based on each party's proportional share of income?

2. Should the court deny the wife's request for fees on appeal based on need and ability to pay where the wife received 70% of the marital assets at trial, including nearly 100% of the liquid assets, where the husband has no savings from which to pay his own fees much less those of the wife, and where the husband's monthly net income is consumed almost entirely by his living expenses and his maintenance and support obligation?

## II. RESTATEMENT OF FACTS

### **A. The Trial Court's Finding That Both Parents Provide Equal Amounts Of Residential Care For Their Children Is Undisputed On Appeal.**

The trial court found that both parents provide equal amounts of residential care for the children under their 50/50 shared residential schedule. (CP 76) (Order of Child Support ¶ 3.5)

The mother does not dispute this finding on appeal:

The parties agreed to a residential schedule whereby the children spend equal amounts of time in each parent's household.

(App. Br. at 4)

### **B. The Trial Court's Division of Property and Award of Maintenance Left The Wife In A Substantially Stronger Financial Position Than The Husband.**

The trial court awarded assets to the mother with a net value of \$534,225, including liquid assets of \$89,000. (See Appendix A to this Brief) The father received assets with a net value of \$232,419, including liquid assets of \$6,532. (See Appendix B to this Brief) While the division of property was skewed in the wife's favor based partly on the trial court's findings as to the wife's separate interest in her house, the effect on the parties is the same regardless of the character of the assets they received. The wife received assets

worth more than twice what the husband received, including nearly all of the liquid assets.

The worksheets show that the father's monthly net income after paying maintenance is \$6,757/mo. (CP 64) The trial court ordered the father to pay maintenance to the mother in the amount of \$1,000/mo. for 30 months and child support of \$500/mo. (CP 72) His basic monthly expenses are \$6,103. (EX 102)

The expenses listed on the father's financial declaration do not include cable television service, uninsured medical expenses for him or the children, entertainment or activities for the children when they are with him, or vacations with the children. (EX 102) The father did not own a vehicle at the time of trial because he had to sell it during the pendency of the divorce to pay temporary maintenance, so he faces the added financial burden of paying for a new vehicle. (RP 216)

After paying the basic expenses listed on his financial declaration, child support, and maintenance, the father will have \$154/mo. remaining to cover all the items listed in the preceding paragraph. The maintenance obligation imposed by the court will require the father to borrow money each month in order to provide

a reasonable life style for the children while they are with him for 50% of each month or to take vacations with the children.

**C. The Trial Court Concluded That There Was No Basis For Designating One Parent As The Support Oblige For Purposes Of Awarding Child Support Based On The Standard Calculation Because Neither Parent Was A Primary Residential Parent.**

Based on the undisputed finding that both parents provide equal amounts of residential care for their children, the trial court concluded that neither parent was entitled to receive child support based on the Standard Calculation because neither parent was the primary residential parent:

The Standard Calculation from line 17 of the Worksheet does not apply because there is no primary residential parent who is entitled to support based upon the Standard Calculation.

(Order of Child Support ¶¶ 3.7 and 3.8) (CP 77)

The mother offered no authority to the trial court to support her position that she should receive child support based on the Standard Calculation when she was not the primary residential parent. The mother presumed at trial that she should receive support and that father has the burden of establishing a deviation based on the parties' 50/50 schedule, even though both parties provide equal amounts of residential care for the children. (CP 22-23)

**D. The Trial Court Set Child Support By Allocating The Basic Support Obligation Between The Two Households Based On Each Parent's Proportional Share of Income.**

The trial court found that under the circumstances of this case, child support should be used to equally apportion the Basic Support Obligation between the two households because each parent was providing 50% of the children's residential care:

Both parents provide equal amounts of residential care for the children, so the transfer payment should serve to equally apportion the Basic Support Obligation (line 5 of the worksheet) between the two households.

(Order of Child Support, ¶ 3.5) (CP 76)

As the first step in determining the amount of support necessary to allocate the basic support obligation between the two households, the trial court applied the standards of RCW Ch. 26.19 to prepare a Child Support Worksheet that determined the following:

- The parents' total Basic Support Obligation for 2 children is \$1,866/mo. (Worksheets, line 5)
- The Proportional share of income is: Father 75% and Mother 25%. (Worksheets, line 6)
- The Father's Basic Support Obligation is \$1,399.50/mo. (Worksheets, line 7)
- The mother's Basic Support Obligation is \$466.50/mo. (Worksheets, line 7)

(CP 64-65, 76)

These figures from the worksheet showed that the father had significantly more of the Basic Support Obligation available to him to provide for the children's care while they resided with him (\$1,366.50/mo. for the father versus \$466.50/mo. for the mother). The court ordered the father to pay child support in the amount of \$500/mo. with the stated intention of "equally allocating the Basic Support Obligation between the two households:"

Transfer payment to equally allocate basic support obligation between the two households: Shata Stephenson pays Sara Stephenson \$500/mo.

(Order of Child Support, ¶ 3.5) (CP 77)

While with the trial court's stated intention was to "equally" allocate the basic support obligation between the two households, the amount of support actually awarded leaves the mother with slightly more than 50% of the Basic Support Obligation each month:

|        | Each Parent's Basic Support Obligation | Transfer Payment | Portion of Basic Support Obligation Available To Each Parent |
|--------|--|------------------|--|
| Father | \$1,399.50/mo.                         | (\$500/mo.)      | \$899.50/mo.   |
| Mother | \$466.50                               | \$500/mo.        | \$966.50/mo.   |

(CP 65 and 77)

Mathematical precision would have required a transfer payment of \$466.50/mo. to leave each parent with \$933 from the Basic Support Obligation each month. No error is assigned to the trial court's decision to round up the amount of the transfer payment from \$466.50/mo. to \$500/mo. In addition to the transfer payment, the father is also required to pay 75% of educational expenses, agreed extracurricular activities, and uninsured medical expenses. (CP 79, 81)

### III. ARGUMENT

#### A. **The Determination of Child Support Is Subject To The Trial Court's Discretion.**

A trial court's award of child support is reviewed for an abuse of discretion. *Marriage of Shui/Rose*, 132 Wn. App. 568, 588, 125 P.3d 180 (2005), *rev. denied*, 158 Wn.2d 1017 (2006). Trial court decisions regarding child support will seldom be changed on appeal; a parent who challenges such decisions must show that the trial court manifestly abused its discretion, and when there is no abuse of discretion, the trial court's decision will be upheld. *Marriage of Booth*, 114 Wn.2d 772, 776, 791 P.2d 519 (1990). Here, in light of the fact that the children reside equally in each parent's household, the trial court did not abuse its discretion by awarding child support to the mother in an amount that equitably

apportioned the “basic child support obligation” between the parents’ two homes.

**B. Neither The Child Support Statute Nor Case Law Provides Authority for Determining Which Parent Should Receive Support In The Context Of A 50/50 Residential Schedule.**

On appeal, the mother argues that the trial court was “required” to award her child support based on the “standard calculation.” But the child support statute, RCW Ch. 26.19, does not address which party should receive support or how the amount of support should be determined in cases of shared custody residential schedules. See *M.M.G. v. Graham*, 159 Wn.2d 623, 152 P.3d 1005 (2007); *Marriage of Arvey*, 77 Wn.App. 817, 894 P.2d 1346 (1995); *Marriage of Oakes*, 71 Wn.App. 646, 861 P.2d 1065 (1993). The mother’s argument that she is the obligee parent entitled to child support appears to be based entirely on her claim that because the father earns more income then he is automatically the obligor parent. But which parent has the greater income is not determinative to the questions of who is the obligor parent, and how much child support, if any, should be paid, especially in cases such as this where the children reside equally with both parents. Instead, the child support schedule contemplates that the nonresidential parent is the obligor who pays child support to

contribute to the cost of the child's care at the residential parent's household. See, e.g., **Marriage of Oakes**, 71 Wn. App. 646, 649, 861 P.2d 1065 (1993) (noting assumption that residential parent pays balance by housing and raising children); see also **Marriage of Holmes**, 128 Wn.App. 727, 737, ¶25, 117 P.3d 370 (2005) (rejecting the mother's argument that the parent with the higher income is the statutorily presumed obligor parent). Here, there is no presumed obligor because both parents are primary residential parents.

The Child Support Statute was enacted in 1988. Prior to the passage of the statute, Washington courts historically awarded custody of the children to one parent who was thereafter referred to as the "custodial parent." **Marriage of Holmes**, 128 Wn.App. 727, 738, 117 P.3d 370 (2005). Once the court determined custody, it was presumed that the noncustodial parent would satisfy his or her support obligation with a monthly payment to the custodial parent and that the custodial parent would satisfy his or her support obligation by providing the child's residential care:

Child support payments have historically been the obligation of the noncustodial parent. It has been within the province of the superior court to determine which parent would be custodial, which would pay child support and how much would be paid. The historical presumption was reflected in the Uniform

Child Support Guidelines, which were approved in 1982 by the Washington State Association of Superior Court Judges. Under the ASCJ Guidelines, “the support to be paid by the noncustodial parent is that fraction of the scheduled amount in the proportion that the parent’s income bears to the total income of both parents.” Washington State Child Support Commission, Final Report, November 1, 1987, at 6. \*739 The obligation of the custodial parent was satisfied by providing for the child in that parent’s home, as evidenced by the fact that the custodial parent received a support payment and did not make one.

***Marriage of Holmes, supra***, 128 Wn.App. at 738-39.

The Child Support Schedule establishes a method for calculating child support, but it does not address which parent should be required to pay support. RCW Chapter 26.19; ***Marriage of Holmes, supra***, 128 Wn.App. at 739. It is therefore presumed that the legislature did not intend to change the historical practice of awarding child support to the custodial parent when it passed the Child Support Statute in 1988:

[T]he legislature did not change the historical presumption in practice that the parent with whom the child resided a majority of the time would satisfy the support obligation by providing for the child while in his or her home and that the other parent would make a child support transfer payment.

***Marriage of Holmes, supra***, 128 Wn.App. at 739.

Thus, the methodology of the child support statute is based on the presumption that there will be a primary residential parent

who will satisfy his or her share of the support obligation by providing primary residential care for all of the parties' children, while the other parent pays child support based on the Standard Calculation. ***M.M.G. v. Graham***, *supra*, 123 Wn.App. at 939.

**C. In The Context of a 50/50 Shared Residential Schedule, Awarding Child Support To One Parent Based On The Standard Calculation Can Result In Serious Inequities Because Both Parents Have Equivalent Residential Burdens.**

Applying the statutory scheme that was intended for cases with a primary residential parent to cases where residential placement is shared or split can result in serious inequities. See ***Marriage of Arvey***, *supra*, 77 Wn.App. 817; ***M.M.G.***, *supra*, 159 Wn.2d 623. In 50/50 shared custody arrangements, the statutory scheme fails to account for the fact that the parents have equivalent residential burdens. ***M.M.G.***, *supra*, 159 Wn.2d at 636. If both parents provide 50% of the children's residential care, there is no logical basis for allocating 100% of the Basic Support Obligation to one parent or the other as the starting point for determining child support, yet this is precisely what support based on the Standard Calculation is intended to do.

It would be inequitable in a shared custody case to require either parent to pay child support based on a straightforward application of the Standard Calculation under RCW Chapter 26.19:

[P]lacing the entire child support obligation on one parent where the residential schedule is shared also would not meet the Legislature's intention of equitably apportioning the child support obligation between both parents.

**M.M.G.**, 123 Wn.App. at 940-41.

While it may be reasonable in a 50/50 residential case to require one of the parents to pay child support in some amount, the question here is whether either parent is entitled to receive child support based on the Standard Calculation? The answer to that question is "no" for a number of reasons. First, neither parent is a primary residential parent, so neither parent benefits from the historical presumption that support flows to the custodial parent. Second, the fact that one parent has less income does not provide a basis for awarding child support to that parent based on the Standard Calculation. **Holmes**, 128 Wn.App. at 738 (holding that the child support statute does not presume that the parent with the greater income should be the obligor). As this court has stated: "Child support is not intended to be used to equalize the standard of living of the parents' households. That is the function of

maintenance.” ***Marriage of Daubert & Johnson***, 124 Wn. App. 483, 498, fn. 2, 99 P.3d 401 (2004), *reversed on other grounds by Marriage of McCausland*, 159 Wn.2d 607, 152 P.3d 1013 (2007). Third, there is no basis for identifying one parent or the other as the support obligee based on gender.

Designating one of the parents in a 50/50 as the support obligee for purposes of the Standard Calculation gives that party an unfair procedural advantage in determining child support. The party who is the support obligor only has to do the math to establish the Standard Calculation, and then the burden shifts to the other party to prove that there is a basis for a deviation based on the residential schedule. The standards for a downward deviation based on the residential schedule have grown increasingly stringent over the years, and the entire analysis of the residential credit is based on the presumption that there is a primary residential parent. With a 50/50 residential schedule, there is no legal or equitable basis for allowing one party to claim child support based on the Standard Calculation while requiring the other party to prove a basis for a downward deviation based on the residential schedule.

Furthermore, designating one parent in a 50/50 case as the support recipient and requiring the other parent to prove a deviation is contrary to the legislative intent behind the residential credit because the residential credit was not intended to apply to 50/50 cases. As noted above, the language of the residential credit itself refers to a primary residential parent, and the legislative history of RCW ch. 26.19.075(1)(d) defines "significant time" for purposes of the residential credit as something less than equally shared time:

Ms. Belcher: What is "significant time" for purposes of residential credits?

Mr. Appelwick: "Significant time" is not defined in legislation. It will be determined on a case-by-case basis. The section does reject the idea of the bright-line ninety day rule adopted by the commission. The majority of parenting plans still have a residential split between households in the eighty/twenty to sixty-five/thirty-five range. ***Presumably, residential time in excess of thirty-five percent and up to 49.9 percent would be significant time.*** Again, it is ultimately up to the court based upon the facts of the case.

House Journal, 6/27/91, at 52<sup>nd</sup> Leg., Reg. Sess., at 4320 (Wash. 1991) (emphasis added).

**D. The Trial Court Acted Within Its Discretion By Allocating The Basic Support Obligation Equitably Between The Two Parents' Households.**

Because the child support statute and case law provide no clear guidance for setting child support when there is no primary

residential parent, the trial court had the task of construing the child support statute to achieve the overall purpose of the act. **Marriage of Oakes**, 71 Wn.App. at 650. The trial court acted within its discretion when it allocated the Basic Support Obligation equally between the two households because setting child support in that manner furthers the overall purposes of the child support statute.

The statement of legislative intent behind the child support statute provides helpful insight into how to approach the question of setting child support in a 50/50 case:

The legislature intends, in establishing a child support schedule, to insure that child support orders are adequate to meet a child's basic needs and to provide additional child support commensurate with the parents' income, resources, and standard of living. **The legislature also intends that the child support obligation should be equitably apportioned between the parents.**

RCW 26.19.001 (emphasis added).

The child support statute follows through on this statement of intent by mandating that the parties' combined basic support obligation be determined from the economic table based on the parties' combined monthly net income and the number of children in the family. **Marriage of Oakes**, *supra*, 71 Wn.App. at 649 (citing RCW 26.19.011(1)).

Based on these guidelines, the first step in setting support in a 50/50 residential case – as in all child support cases – is to determine the Basic Support Obligation under the economic table based on the parties' combined monthly net incomes and the number of children in the family. RCW 26.19.011(1); **M.M.G.**, *supra*, 159 Wn.2d at 638; **Marriage of Oakes**, *supra*, 71 Wn.App. at 649. The record clearly shows that the court established the Basic Support Obligation based on the parties' incomes and the number of children.

Once the basic support obligation has been determined under the economic table, however, the analysis for 50/50 cases diverges from the analysis that applies to cases with a primary residential parent. When there is a primary residential parent, it is presumed that the primary residential parent will receive child support, and that the parent will pay support based on the Standard Calculation. No such presumption applies with a 50/50 shared residential schedule.

With a 50/50 schedule, both parents provide equal amounts of the residential care that the basic support obligation of the economic table is intended to cover. Logically, the basic support obligation should be shared between the parties, and the monthly

transfer payment should be set in an amount that leaves both parties with 50% of the basic support obligation (or close thereto).

To the extent that the trial court's decision to allocate the Basic Support Obligation equally between the two households constitutes a "deviation," the child support statute allows for a deviation based on the residential schedule:

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

RCW 26.19.075(1)(d).

For purposes of determining support in a shared custody arrangement, the critical part of this provision is that it states that the residential schedule may provide a basis for deviating from the standard calculation. Beyond that, however, the statutory provision for a residential credit cannot be applied literally to a 50/50 case

because it presumes that there is a primary residential parent who has already been designated as the child support recipient.

As a practical matter, the question is not whether a deviation based on the residential schedule is appropriate in a 50/50 case, but how the deviation should be structured or calculated. The Court of Appeals has declined to provide a standard formula for addressing the residential credit in shared custody cases:

Because the statute explicitly gives the trial court discretion to deviate from the basic support obligation based on the facts of a particular case, a specific formula is neither necessary nor statutorily required to ensure the parents' child support is properly allocated.

***M.M.G.***, 159 Wn.2d at 636.

The trial court acted within its discretion when it equally apportioned the Basic Support Obligation between the two parent's household. The trial court followed the mandates of the Child Support Statute to the extent it was possible to do so with a 50/50 residential schedule. It calculated the parties' combined Basic Support Obligation, the parties' proportional shares of income, and each party's Basic Support Obligation. Once the trial court reached that point in the analysis, however, there was no logical or legal basis for awarding child support to either party based on the Standard Calculation because neither party was a primary

residential parent. The trial court correctly concluded that the concepts of “Standard Calculation and deviations therefrom” do not apply to a case with a 50/50 residential schedule. The trial court acted in furtherance of the principals underlying the Child Support Statute when it set child support in a 50/50 residential case by equally apportioning the Basic Support Obligation between the two households.

**E. The New York Case Cited In Appellant’s Brief Is Off Point Because It Does Not Involve A 50/50 Shared Residential Schedule.**

Appellant’s reliance on *Bast v. Rossoff*, 91 N.Y.2d 723, 697 N.E.2d 1009 (1988), is misplaced. *Bast v. Rossoff* does not involve a 50/50 residential schedule. Instead, the case deals with a father’s request for a residential credit in the context of a residential schedule that provides for the children to reside primarily with the mother while spending five nights out of every two-week period with the father:

They agreed to a “shared time allocation,” whereby plaintiff (father) would have the child with him from Wednesday evening to Sunday evening one week, and Wednesday evening to Thursday morning the following week.

**Bast v. Rossoff**, supra, 697 N.E.2<sup>nd</sup> at 725.

Appellant's entire discussion of *Bast v. Rossoff* is off point because the facts of that case bear no resemblance at all to the facts of this case.

**F. The Court Should Deny The Mother's Request For Fees Because She Has No Need And The Father Has No Ability To Pay In Light Of The Trial Court's Division of Property and Maintenance Award.**

The mother's request for fees should be denied because she is actually in a stronger financial position than the father at this time vis-à-vis the ability to pay attorney fees. The mother received assets of \$534,225. (Appendix A). The father received assets of \$220,986. (Appendix B) The mother's property award included liquid assets of \$89,000. (Appendix A) The father received liquid assets of \$17. (Appendix B) The remainder of the father's award comprised \$52,000 equity in his house, \$30,004 from his Deferred Compensation Plan (subject to a debt in the amount of \$27,066), and pension benefits with a present value of \$184,309. (Appendix B) The father has no discretionary income from which to pay his own fees, much less the wife's. The wife should pay her own fees for this appeal.

**IV. CONCLUSION**

The trial court's award of child support was well within its discretion, taking into consideration the parties' 50/50 residential

schedule and the legislative intent behind the Child Support Statute, which seeks to equitably allocate the Basic Support Obligation of the child support schedule between the parents based on their incomes. This court should affirm and deny the wife's motion for fees.

Dated this 16<sup>th</sup> day of November, 2012.

LAW OFFICES OF CARL T. EDWARDS, P.S.

By: 

Carl T. Edwards  
WSBA No. 23316  
Attorney for Respondent

## APPENDIX A

### Mother's Property Award

| <u>Assets</u>                                  | <u>Value</u>          |                 |
|--|-----------------------|-----------------|
| Residence                                      | \$600,000             | EX 116          |
| Father's Deferred Comp Acct*                   | \$75,0000             | CP 71           |
| Father's Pension (50% of<br>Community portion) | \$80,765 <sup>1</sup> | CP 71,<br>EX 31 |
| Hartford Investment Account*                   | \$6,700               | EX 122          |
| Windermere retirement acct                     | \$3,084               | EX 11           |
| Chase checking acct*                           | \$5,600               | EX 28           |
| Chase savings acct*                            | \$2,300               | EX 28           |
| <u>Honda Odyssey</u>                           | <u>\$17,325</u>       | EX 33           |
| <b>Total Assets</b>                            | <b>\$790,774</b>      |                 |

\* Liquid Assets = \$89,600

| <u>Liabilities</u>                | <u>Amount</u>    |       |
|-----------------------------------|------------------|-------|
| Bank of Am. Mortgage on residence | \$153,049        | CP 72 |
| ½ of IRS debt                     | \$3,750          | CP 72 |
| <u>Obligation to Marie Peters</u> | <u>\$100,000</u> | EX 26 |
| <b>Total Liabilities</b>          | <b>\$256,549</b> |       |

### Mother's Net Property Award

|                               |                    |
|-------------------------------|--------------------|
| Total Assets                  | \$790,774          |
| <u>Less Total Liabilities</u> | <u>(\$256,549)</u> |
| <b>Net Property Award</b>     | <b>\$534,225</b>   |

<sup>1</sup> The mother was awarded 50% of the community portion of the father's LEOFF II pension. (CP 71) The value of the 50% of the community portion of the father's pension can be determined from the information provided by the report of the mother's expert, Ken Weber. (EX 31) Mr. Weber's report states that the value of the father's pension was \$265,074 as of 9/30/11. That was based on 192 total months of service from date of hire to the date of the report. Each month of service is equally weighted, so the community's interest is based on the number of months from the date of cohabitation to the date of separation. (EX 31) (Weber Report at 2).

The trial court anticipated that the parties would have to re-calculate the community component of the father's pension based on the trial court's findings as to the date on which the parties'

began to cohabit in a committed relationship and the date of separation. (CP 73)

The trial court found that the parties began to cohabit in a committed relationship on January 1, 2000 and separated on September 20, 2009. (CP 84) Those findings yield 117 months of community credit toward the total value.

Following the formula set forth in Mr. Weber's report (EX 31), the community portion of the father's pension is determined as follows:

$$117/192 \times \$265,074 = \$161,530$$

The mother received 50% of the community component valued at \$80,765.

The father received the balance of the retirement account at value of \$184,309 (total value of pension less portion awarded to wife). (CP 71; EX 31)

## APPENDIX B

### Father's Property Award

| <u>Assets</u>  | <u>Value</u>     |                            |
|--|------------------|----------------------------|
| Residence  | \$370,000        | EX 117                     |
| Father's Deferred Comp Acct  | \$29,004         | EX 127                     |
| Father's Pension (50% of<br>Community portion + separate<br>portion) | \$184,309        | See<br>Appendix A,<br>fn.1 |
| <u>Bank of America checking acct</u>                                 | <u>\$17</u>      | EX 128                     |
| <b>Total Assets</b>  | <b>\$583,330</b> |                            |

| <u>Liabilities</u>              | <u>Amount</u>    |       |
|---------------------------------|------------------|-------|
| Chase Mortgage on residence     | \$318,000        | CP 71 |
| Loan against Deferred Comp Acct | \$27,066         | CP 72 |
| Citi credit card                | \$4,668          | CP 72 |
| Debt to Ron Gershwind           | \$8,860          | CP 72 |
| <u>½ of IRS debt</u>            | <u>\$3,750</u>   | CP 72 |
| <b>Total Liabilities</b>        | <b>\$362,344</b> |       |

### Father's Net Property Award

|                               |                    |
|-------------------------------|--------------------|
| Total Assets                  | \$583,330          |
| <u>Less Total Liabilities</u> | <u>(\$362,344)</u> |
| <b>Net Property Award</b>     | <b>\$220,986</b>   |

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

In re the Marriage of  
SARA STEPHENSON,  
Appellant/Cross-Respondent  
And  
SHATA STEPHENSON  
Respondent/Cross-Appellant

No. 68507-4-I  
DECLARATION OF SERVICE

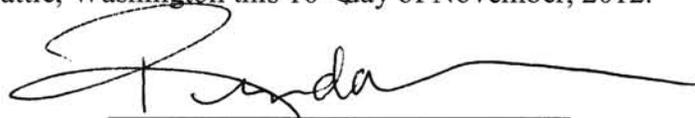
The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on November 16, 2012, I arranged for service of the foregoing Respondent's Brief and Supplemental Designation of Exhibits to the Court of Appeals, Division I and to the parties to this action as follows:

|  |  |
|--|--|
| Patricia Novotny<br>3418 NE 65 <sup>th</sup> Street, Suite A<br>Seattle WA 98115<br>(206) 525-0711 | <input type="checkbox"/> Facsimile<br><input type="checkbox"/> Messenger<br><input checked="" type="checkbox"/> U.S. Mail<br><input type="checkbox"/> E-Mail |
|--|--|

|  |  |
|--|--|
| Delney N. Hilen<br>Lasher Holzapfel Sperry & Ebberson,<br>PLLC<br>601 Union Street, #2600<br>Seattle, WA 98101<br>206-624-1230 | <input type="checkbox"/> Facsimile<br><input type="checkbox"/> Messenger<br><input checked="" type="checkbox"/> U.S. Mail<br><input type="checkbox"/> E-Mail |
| Court of Appeals Division I<br>One Union Square<br>600 University St<br>Seattle, WA 98101-1176                                 | <input type="checkbox"/> Facsimile<br><input type="checkbox"/> Messenger<br><input checked="" type="checkbox"/> U.S. Mail<br><input type="checkbox"/> E-Mail |

DATED at Seattle, Washington this 16<sup>th</sup> day of November, 2012.



\_\_\_\_\_  
 Rinda M. Evans