

NO. 72427-4-I

THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION 1

---

SCOTT J. McGOWAN,  
Appellant

v.

YELENA McGOWAN  
Respondent

---

---

RESPONSE BRIEF OF RESPONDENT YELENA McGOWAN

---

Yasmeen Abdullah  
Attorney for Respondent  
Abdullah Law Firm, PLLC  
9500 Roosevelt Way N.E., Suite 301  
Seattle, Washington 98115  
206-363-0455

2015 JUL 31 AM 11:35  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON

W

**I. TABLE OF CONTENTS**

A. Table of Authorities iii

B. Statement of Facts 1

C. Argument

1. Standard of Review - The Trial Court Order Is Reviewed For Abuse of Discretion and Best Interests of the Children .....6

2. The Trial Court’s Amended Child Support Worksheets and Order are Correct Where it Used the Stipulated Worksheets and the Stipulated Income for the Mother to Order the Standard Calculation Transfer Payment .....7

3. The Trial Court Properly Denied the Father’s Child Support Deviation Request and Made Appropriate Findings Where the Deviation Would Have Resulted in Insufficient Funds for the Mother to Meet the Children’s Basic Expenses .....10

4. The Trial Court Properly Considered the Financial Circumstances of the Parents and the Needs of the Children When it Denied the Father’s Deviation Request .....13

5. The Trial Court Equitably Apportioned the Support of the Children Between the Parents .....17

6. The Trial Court Properly Exercised its Discretion on How to Proportion the Parents’ Shares of Health Care and Special Expenses .....18

7. The Trial Court Did Not Abuse its Discretion When it Ordered an Aggregated Child Support Amount That Was the Standard Calculation Child Support Transfer Payment	20
8. Attorney Fees On Appeal Should Be Awarded to the Respondent Yelena McGowan	21
D. Conclusion	22

## II. TABLE OF AUTHORITIES

### Table of Cases

<i>Cowiche Canyon Conservatory v. Bosley</i> , 118 Wn.2d 801, 828 P.2d 549 (1992)	7, 14
<i>In re Marriage of Casey</i> , 88 Wn. App. 662, 967 P.2d 982 (1997)	14, 18-19
<i>In re Marriage of Goodell</i> , 130 Wn. App. 381, 122 P.3d 929 (2005)	10
<i>In re Marriage of Green</i> , 97 Wn. App. 708, 986 P.2d 144 (1999)	13
<i>In re Marriage of Griffin</i> , 114 Wn.2d 772, 791 P.2d 519 (1990)	6
<i>In re Marriage of Horner</i> , 151 Wn.2d 884, 93 P.3d 124 (2004)	6, 21
<i>In re Marriage of Leslie</i> , 90 Wn. App. 786, 954 P.2d 330 (1998)	22
<i>In re Marriage of Mattson</i> , 95 Wn. App. 592, 976 P.2d 157 (1999)	7, 15-16
<i>In re Marriage of McDole</i> , 122 Wn.2d 604, 859 P.2d 1239 (1993)	7
<i>In re Marriage of Morris</i> , 176 Wn. App. 893, 309 P.3d 767 (2013)	9
<i>In re Marriage of Muhammad</i> , 153 Wn.2d 795, 108 P.3d 779 (2005)	22
<i>In re Marriage of Schnurman</i> , 178 Wn. App. 634, 316 P.3d 514 (2013)	11, 16, 17

<i>State v. Brown</i> , 132 Wn.2d 529, 940 P.2d 546 (1997)	7
<i>State ex rel. Kibbe v. Rummel</i> , 36 Wn.2d 244, 217 P.2d 603 (1950)	20

Statutes

RCW 26.19.080.....	18
RCW 26.09.140.....	21-22

Court Rules

RAP 18.1 .....	21, 22
----------------	--------

## **B. STATEMENT OF FACTS**

Yelena and Scott were married in 1998 and had two children together.<sup>1</sup> CP at 898, 901. Scott then filed for dissolution of marriage on July 11, 2013. CP at 898. Scott alleged that Yelena had abused the children and sought full custody. CP at 11-12, 133-142. Under temporary orders, the court gave primary custody to Scott but made no findings of child abuse. CP at 133, 137. Under the temporary orders, Yelena had overnights with the two children only every other weekend. CP at 133. Prior to the temporary orders, Yelena had been the primary caregiver to the children and had been a stay-at-home mother until she returned to work in 2012. RP (June 12, 2014) at 64-65, 74; CP at 1067-1068. Yelena tried to keep her bond and connection with the children even without the rare overnights, by agreeing to provide after-school care for the children while Scott was at work. CP at 1049. After a full parenting evaluation, Dr. Wendy Hutchins-Cook recommended that the children have more time with their mother than what was ordered under the temporary parenting plan. CP at 1070. She recommended that there be a 50-50 or equally shared residential schedule for the parents. CP at 1070-1071.

The parents eventually agreed to enter a 50-50, equally shared residential schedule. CP at 696-708; RP (June 11, 2014) at 180. But, the

---

<sup>1</sup> Because the parents share the same last name, we refer to them by their first names to avoid confusion.

final parenting plan and change to the parenting schedule was not signed by the court until the first day of trial on June 11, 2014. RP (June 11, 2014) at 180. Thus, until the trial of June 11, 2014, Yelena had only two overnights with the children every other week, and her time with the children expanded significantly starting in June 2014. RP (June 11, 2014) at 180-81.

At trial, Yelena supplemented her bank statements and paystubs so that the court had the prior few months of statements in addition to all of the prior bank statements, paystubs, and tax returns that had previously been filed and provided. RP (June 11, 2014) at 18, 96. Although Scott initially claimed that she had not disclosed prior tax returns or bank statements, it was later shown that Yelena had disclosed all required documents, and supplemented her disclosure with her most recent bank statements at trial. RP (June 11, 2014) at 96. The delay in supplementing the bank statements was due to Yelena not being able to afford attorney fees to meet with her attorney or have her attorney supplement prior to trial. RP (June 11, 2014) at 18-19.

At trial, Yelena testified about the effects of the new parenting plan on her living situation and her expenses related to the children. RP (June 12, 2014) at 78-91. Because she would now have significantly more overnights with the children, Yelena needed to move from her one

bedroom apartment to a two bedroom apartment. RP (June 12, 2014) at 78. The 13 and 9 year old boys had been sleeping in her living room at the time of trial, and she needed to move to a place where they could have their own bedroom and beds. CP at 901; RP (June 12, 2014) at 78-79. Without child support, she would not be able to afford an apartment where the children would have a room or their own beds. RP (June 12, 2014) at 78-79. Also, Yelena's food costs and children activity expenses would increase under the new parenting plan because with the increased residential time she would be feeding the children additional meals and taking them to more activities. RP (June 12, 2014) at 87. Without child support, Yelena would not be able to afford the increased meal expense for the children, nor would she be able to afford the parenting coaching and counseling that was required under the new parenting plan. RP (June 12, 2014) at 90-91.

Yelena also testified that the divorce would be increasing her medical and car insurance expenses, as she had previously been covered under Scott's medical and car insurance. RP (June 12, 2014) at 80-81, 87-88. Yelena's employment only offered catastrophic medical insurance, so her medical insurance monthly payment to buy insurance on her own would be about \$400 a month. RP (June 12, 2014) at 81. Yelena also had new debt due to the divorce, such as \$3,500 that she still owed for the

parenting evaluation and \$12,000 she still owed for attorney fees. RP (June 12, 2014) at 76, 91, 137-138. This did not include the attorney fees she would owe for trial or subsequent motions by Scott. RP (June 12, 2014) at 91; Exhibit 104.

During trial, Yelena's attorney stipulated to Scott's gross income to be set at \$9,823.23 a month for purposes of calculating child support, while noting that Scott's income was actually higher than this amount. RP (June 12, 2014) at 7-8. She explained that the difference in child support calculation numbers was "de minimus" for purposes of calculating the standard child support calculation. RP (June 12, 2014) at 7. Yelena's attorney also stipulated to an income for Yelena that had been higher than her past income, because Yelena's nursing income fluctuated based on when her clients needed in-home care. RP (June 12, 2014) at 7, 76-77. Scott's attorney admitted that the income used for Yelena to calculate child support was higher than Yelena's actual income. RP (June 12, 2014) at 160.

While Yelena's expenses related to the children would increase under the new parenting plan, Scott's children-related expenses were decreasing starting the first day of trial when the new parenting plan took effect. RP (June 12, 2014) at 87-91; CP at 133-142, 696-708. Scott's other expenses were also reduced as part of the final divorce orders. For

instance, under temporary orders Scott paid Yelena spousal maintenance of \$1,300 each month. RP (June 12, 2014) at 17; CP at 615. But under final orders Scott no longer paid any spousal maintenance, as Yelena sought only support for the children. CP at 900. Scott's most significant monthly expense during the time of trial was attorney fees for about \$2,400 a month, which he testified he would no longer have after the marriage dissolution trial. RP (June 12, 2014) at 51.

Although Scott blamed the parents' lack of savings on Yelena, the court found that Yelena had not wasted the marital resources. CP at 901. Trial evidence showed that past major expenses included sending the children to private school before enrolling them in public school and repairs to the family home. CP at 1050; RP (June 11, 2014) at 77.

After considering trial testimony and trial exhibits, the court found that the children were in need of support when they had residential time with their mother. CP at 892; 901. The entered child support worksheets that set the mother's net income at \$4,928.89. CP at 892. The standard calculation for child support was set based on the mother's net income of \$4,928.89. CP at 892-896. Using the mother's net income of \$4,928.89 in the child support worksheets, the standard calculation for the father's child support is \$1,533.82, which the court ordered the father pay to the mother. CP at 892,894. The court orally found that the mother's extra expenses

related to the children was “about \$1,620” and this was in addition to her other expenses that she had been paying for the children. RP (June 12, 2014) at 161.

In denying Scott’s request to deviate from the child support standard calculation, the court entered findings that a “deviation would result in insufficient funds to support the basic needs of the children in the [mother’s] household.” CP at 884. The trial court also considered the father’s proposals for findings regarding a deviation and residential credit and rejected them. CP at 895-896. The trial court considered all of the testimony and exhibits admitted at trial, including the testimony regarding the parents’ monthly living expenses and incomes, and the court then made findings that the children were in need of support while with their mother. RP (June 12, 2015) at 185; CP at 880-896, 898-903; 904-911.

## **B. ARGUMENT**

### **1. ABUSE OF DISCRETION AND BEST INTERESTS OF THE CHILDREN STANDARD OF REVIEW**

This court reviews child support orders for an abuse of discretion. *In re Marriage of Griffin*, 114 Wn.2d 772, 776, 791 P.2d 519 (1990); *In re Marriage of Horner*, 151 Wn.2d 884, 893, 93 P.3d 124 (2004). A trial court abuses its discretion when its decision is “manifestly unreasonable or based upon untenable grounds or reasons.”

*Id.* at 893 (quoting *State v. Brown*, 132 Wn.2d 529, 572, 940 P.2d 546 (1997)).

An appellate court reverses a trial court's factual findings only if they are unsupported by substantial evidence in the record. *In re Marriage of McDole*, 122 Wn.2d 604, 610, 859 P.2d 1239 (1993). Unchallenged findings are verities on appeal. *Cowiche Canyon Conservatory v. Bosley*, 118 Wn.2d 801, 808, 828 P.2d 549 (1992).

When interpreting child support statutes or reviewing child support orders, this court looks to the best interests of the children. *See In re Marriage of Mattson*, 95 Wn. App. 592, 599-600, 976 P.2d 157 (1999) (the goal of child support and standard of review is "the best interests of the children.").

**2. THE AMENDED CHILD SUPPORT WORKSHEETS AND ORDER ARE CORRECT AND THERE IS NO ERROR WHERE THE CHILD SUPPORT PAYMENT WAS CALCULATED USING THE INCOME STIPULATED TO BY BOTH PARTIES.**

The father's argument that the trial court erred when it set the mother's net income at \$4,174 a month instead of \$4,922 a month is not grounds for reversal where the amended child support order does not deviate from the child support worksheet standard calculation, and the

child support worksheets set the mother's net income at \$4,922 a month.

*See* Amended Opening Brief of Appellant at pg. 8.<sup>2</sup>

In the amended child support order, the court set the mother's net income at \$4,173.99. CP at 883. However, the child support worksheets entered by the court set the mother's net income at \$4,928.89. CP at 892. Thus, the standard calculation for child support is set based on the mother's net income of \$4,928.89. CP at 892-896. Using the mother's net income of \$4,928.89 in the child support worksheets, the standard calculation for the father's child support is \$1,533.82. CP at 894. The court ordered the father pay the standard calculation in child support of \$1,533.82, which was based on the mother's net income set at \$4,928.89. CP at 883,892.

Thus, the potential of a typographical error in Section 3.3 of the child support order regarding the mother's net income is harmless error, because the child support order uses the mother's net income that was stipulated to by the father of \$4,928.89 to calculate the child support in the worksheets and the ordered child support amount in Section 3.5 is the same in the worksheets. Remanding this case to the trial court to change Section 3.3 of the child support order would not affect or change the

---

<sup>2</sup> We have objected to and filed a motion to strike portions of Appellant Scott McGowan's Amended Opening Brief for alleged statements of fact that are not within the record and without citation, and to strike his attached financial declaration that is not in the record on appeal. This motion to strike remains pending at the time this brief is filed.

standard calculation amount in Section 3.5 nor would it affect the amount paid in child support each month.

Additionally, Scott's attorney admitted that the \$4,928.89 amount in the child support worksheets was higher than Yelena's actual income. RP at (June 12, 2014) at 160; *see also* Exhibit 9. The exhibits and testimony established that Yelena's income was actually lower than what was used to calculate child support. Yet, the trial court still ordered the standard calculation for child support and child support worksheets that Scott's own attorney had proposed. Thus, any error was harmless and invited error by Scott.

It "is well established that errors in civil cases are rarely grounds for relief without a showing of prejudice to the losing party." *In re Marriage of Morris*, 176 Wn. App. 893, 903, 309 P.3d 767 (2013) (internal quotation marks omitted). Here, there is no prejudice to Scott where the \$1,533.82 standard child support calculation was determined using the mother's net income of \$4,928.89, which is the income amount that Scott requested be used for the mother. Accordingly, there is no basis to reverse the child support order.

**3. THE TRIAL COURT PROPERLY DENIED THE FATHER'S DEVIATION REQUEST AND ENTERED FINDINGS OF FACT THAT ARE SUPPORTED BY THE RECORD.**

Contrary to the findings and record, Scott argues that the trial court erred when it denied his request for a child support deviation because the trial court found that a deviation would result in insufficient funds for the children when they were with their mother.

A “deviation from the standard support amount is an exception and should only be used where it would be inequitable not to do so.” *In re Marriage of Goodell*, 130 Wn. App. 381, 391, 122 P.3d 929 (2005). “It is within the trial court’s discretion to grant or deny a deviation and, generally, trial courts are not reversed on such decisions.” *Id.*

Without any supporting authority Scott argues that the denial of his child support deviation request is in error because the trial court’s finding in Section 3.8 of the child support order is a conclusion of law rather than a finding of fact. Contrary to Scott’s argument, the trial court specifically entered a finding that, “A deviation would result in insufficient funds to support the basic needs of the children in the recipient [mother’s] household.” CP at 884. The trial court also includes in its findings that there “are children in need of support and child support should be set pursuant to the Washington State Child Support Schedule.” CP at 901. The trial court orally found that Yelena had “about \$1,620” in additional

new expenses for the children due to the new residential schedule. RP (June 12, 2014) at 161.

We have found no cases to support Scott's argument that the trial court's finding that a deviation results in insufficient funds to support the basic needs of the children in the mother's household is somehow a conclusion of law and not a finding of fact. On its face, this is a finding of fact as it pertains to the facts regarding the children's needs and mother's finances. This is a finding that supports the conclusion of law made by the trial court when it denied Scott's deviation request. All of the appellate cases we found where the trial court included "insufficient funds" language as part of the child support orders characterized the language as a "finding" rather than a conclusion of law. *In re Marriage of Schnurman*, 178 Wn. App. 634, 637, 316 P.3d 514 (2013).

Here, Scott does not like the court's finding that the mother did not have sufficient funds to support the basic needs of their children, and tries to attack this finding by claiming it is a conclusion of law. However, case law and the plain language of the court order show that it is a finding based on the testimony and facts at trial. *See Schnurman*, 178 Wn. App. at 643 (holding that the trial "court found that... a downward deviation would leave [the mother] with insufficient funds.")

Additionally, the trial court's findings regarding child support and denying Scott's requested deviation are supported by substantial evidence in the record. The evidence and testimony at trial established that the mother had been unable to afford basic child-related expenses, such as beds and a room for the children. She lived in a one bedroom apartment and the two boys slept in the living room. RP (June 12, 2014) at 78. She could not move until she received child support, because she could not afford the additional rent for a two bedroom apartment. RP (June 12, 2014) at 78-79. The cost of providing a room for the children would be an additional \$700 each month. RP (June 12, 2014) at 78-79. Yelena also testified that her food costs and meal expenses would be increasing under the new parenting plan. RP (June 12, 2014) at 87, 90.

Scott relies on *State ex rel. J.V.G. v. Van Guilder* to argue that he should receive a deviation because only basic needs should be considered when determining child support. See Appellant's Amended Opening Brief at pg. 10. However, *Van Guilder* does not apply in this case because there is no findings or indication that the court was including or considering extraordinary needs, such as the private school tuition that was included in the *Van Guilder* child support order.

Instead, the trial court ordered the standard calculation of child support, without any extraordinary expenses. Additionally, providing a

room and bed for a child is a basic need. This is particularly true in the present case where the children are two boys ages 13 and 9 years old. A room to sleep and beds of their own for two boys of this age is a basic rather than an extraordinary need and expense. Yelena's food costs and meal costs to feed the boys which she testified about at trial, which would be increasing by about another \$300 a month due to the new residential schedule, are also basic needs for the children.

While Scott tries to discredit Yelena's trial testimony on appeal regarding her increased expenses under the new parenting plan, the weight of her testimony and credibility is best determined and left to the trial court. An appellate court does "not substitute [its] judgment for the trial court's, weigh the evidence, or adjudge witness credibility." *In re Marriage of Green*, 97 Wn. App. 708, 714, 986 P.2d 144 (1999). The trial court weighed the evidence and found Yelena's testimony credible when it entered findings and orders that she needed child support to cover the children's basic needs.

**4. THE TRIAL COURT PROPERLY DENIED THE DEVIATION REQUEST AFTER IT CONSIDERED THE FINANCIAL CIRCUMSTANCES OF BOTH HOUSEHOLDS AND THE NEEDS OF THE CHILDREN**

Although Scott argues that the trial court did not take into consideration each household's finances, the trial court's findings and

child support worksheets show that the trial court considered the parents' finances, and made findings regarding them.

Specifically, the trial court found that the children were in need of support when with their mother. CP at 901. Scott has failed to assign error to the trial court's finding in Section 2.20 of the court's Findings of Fact and Conclusions of Law. Thus, the court's finding that the children were in need of support when with their mother is a verity on appeal. *Cowiche Canyon Conservatory v. Bosley*, 118 Wn.2d 801, 808, 828 P.2d 549 (1992). The trial court also found that a "deviation would result in insufficient funds to support the basic needs of the children in the [mother's] household." CP at 884. The trial court orally found that Yelena had "about \$1,620" in new expenses for the children under the new residential schedule. RP (June 12, 2014) at 161. Although Scott does not like these findings, they are supported by the record and are not error. RP (June 12, 2014) at 78-90.

The trial court also made specific findings about each parent's assets, debt, and liabilities. CP at 898-900. Scott has not assigned error to any of the trial court's findings regarding his assets and debts, and they are also verities on appeal. Nor has Scott assigned error to the trial court finding that Scott's gross monthly income was \$9,823.23 each month, and \$3,823.23 each month more than the mother's income. CP at 892. The

trial court also stated during trial that it would consider all testimony and exhibits before making findings and entering the child support order. RP (June 12, 2015) at 185. This included testimony that Scott was living in a home without paying any rent or mortgage at the time of trial, and had been living rent free since November 2008. RP (June 11, 2014) at 71-78. While Scott was living in a 3 bedroom house rent free, Yelena was paying rent and could not afford to move into a two bedroom apartment without child support assistance. RP (June 11, 2014) at 71; RP (June 12, 2014) at 78-79.

Thus, the trial court clearly considered the financial situation of each of the parents and the record supports the finding that the mother needed the standard calculation child support to provide for the basic needs of the children.

Scott complains that the child support payment will affect the amount of income he will have when he retires. This is an argument he made to the trial court, and which was rejected when the court denied his child support deviation request. *See* RP (June 12, 2013) at 163. This court should affirm the trial court's orders because Scott's argument is contrary to the purpose of child support and applies the wrong standard.

The purpose and goal of child support is to provide for the children and determine what is in the best interests of the children. *In re Marriage*

*of Mattson*, 95 Wn. App. 592, 599-600, 976 P.2d 157 (1999). While the court also looks at each parent's income and ability to pay child support, the parent's economic circumstances are already taken into account as part of the child support worksheets. See *In re Marriage of Casey*, 88 Wn. App. 662, 666-67, 967 P.2d 982 (1997). Additionally, the trial court took into account that Scott was contributing large amounts to his pension each month when calculating the child support transfer payment. CP at 892.

If this court adopts Scott's argument and standard of review, then the court would be using a best interest of the parent, rather than child standard. It will almost always be in the best interest of a parent to contribute more to a retirement fund or pension, but this is not in the best interest of the child where child support is needed for basic needs such as food, a room, and a bed. The evidence at trial and in the findings entered by the court show that the trial court properly denied Scott's deviation request where the mother did not have sufficient funds to meet the basic needs of the children.

This case is nearly identical to *In re Marriage of Schnurman*, where the court entered a child support order with a monthly transfer payment based on the standard calculation and denied the father's request to deviate based on a nearly equal time residential schedule. 178 Wn. App. 634, 316 P.3d 514 (2013). As this court did in *Schnurman*, we

request that this court affirm the trial court's denial of the deviation request based on insufficient funds for the children in the mother's household.

**5. THE TRIAL COURT EQUITABLY APPORTIONED THE SUPPORT OF THE CHILDREN BETWEEN THE PARENTS.**

As already established, the trial court's use of the child support worksheets equitably apportions child support between the parents as it takes into consideration the parents' different incomes. Although Scott argues that child support was not equitably apportioned because he claims to have had the same expenses as Yelena had regarding the children, this does not take into consideration the differences in the parents' income or the evidence at trial regarding Yelena's child-related expenses.

The child support worksheets already take into consideration the differences of parental income and equitably apportion the basic expenses to the parents, including where there is a shared residential schedule. *See In re Marriage of Schnurman*, 178 Wn. App. 634, 316 P.3d 514 (2013). Additionally, the record in this case establishes that Yelena had less income to meet the child's basic needs. CP at 892. Yelena's child-related expenses were increasing due to the new parenting plan that took effect the first day of trial, while Scott's child related expenses would be decreasing as the time he spent with the children was also decreasing. *See*

RP (June 12, 2014) at 78-91; CP at 133-142, 696-708. Accordingly, the trial court properly denied the request to deviate from the standard child support calculation.

**6. THE TRIAL COURT HAS DISCRETION ON HOW TO PROPORTION THE PARENTS' SHARES OF HEALTH AND EXPENSES**

Without citation to any case, Scott argues that there is no discretion and it is mandatory that a court proportion health care and special expenses based on the child support worksheet percentages. *See* Appellant's Amended Brief pg. 13-14 (no cites to case law to support alleged error). Contrary to Scott's argument that the court has no discretion to vary from the percentage shares in the child support worksheet for health care and special expenses, courts have discretion to order that one parent pay more than the child support worksheet percentage.

Although early Washington cases held that the trial court was required to proportion special expenses in the same amount proportion as the child support obligation, this changed with the case of *In re Marriage of Casey* and all subsequent cases.

Washington courts now hold that "RCW 26.19.080(4) expressly gives the trial court 'discretion to determine the necessity for and the reasonableness of all amounts ordered in excess of the basic child support

obligation.” *In re Marriage of Casey*, 88 Wn. App. 662, 667, 967 P.2d 982 (1997) (holding no abuse of discretion where court apportioned all travel costs to father).

Because the trial court has discretion in setting how special expenses will be proportioned between the parents, there is no error to reverse. Here, the trial court found that the father’s income was significantly higher than the mother’s income, which supports the father paying for a higher percentage of the expenses. CP at 882-883.

At trial, the parties stipulated that the father’s gross income was at least \$3,823.23 more each month than the mother’s gross income. RP (June 12, 2014) at 7-8. As part of this stipulation, Yelena’s attorney noted that Scott’s income was actually higher than the amount in the child support worksheets, but that it made only a small difference and was not worth the extra attorney fees to fight over the amount. RP (June 12, 2014) at 7. Later that day, the trial court noted, and Scott’s attorney admitted, that Yelena’s income was actually less than the \$4,928.89 that was used as her net income in the child support worksheets. RP (June 12, 2014) at 160. Thus, Scott’s income was actually higher and Yelena’s income was actually less than what was reflected in the child support worksheets, but Yelena’s attorney did not want to expend Yelena’s already limited resources to argue about the differences in income. RP (June 12, 2014) at

7, 160. The fact that the court used the parents' incomes that were more accurate for purposes of proportioning the out of pocket expenses is not error. Additionally, if this court finds that the trial court did not enter enough findings as to the necessity of proportioning expenses, the proper remedy is to remand to the trial court to make findings of fact regarding how to apportion the expenses that will be in the children's best interests.

**7. THE TRIAL COURT DID NOT ERR WHEN ORDERING AN AGGREGATED CHILD SUPPORT AMOUNT THAT WAS THE STANDARD CALCULATION TRANSFER PAYMENT**

Contrary to the law, Scott argues that the trial court erred when it ordered an aggregated amount for child support that was the standard child support calculation.

After extensive research and time, we have found absolutely no cases that support Scott's argument that a trial court is required to segregate the child support amount for each child. In fact, Scott cites only two cases regarding segregating child support and neither of the cases hold that it is error to aggregate the child support amount. One of these cases actually discusses and upholds an aggregated child support order, which is contrary to Scott's argument. *See State ex rel. Kibbe v. Rummel*, 36 Wn.2d 244, 217 P.2d 603 (1950).

Scott's argument that it may be more convenient for him in the future if the child support amount is segregated for each child does not

apply the abuse of discretion standard. This court reverses child support orders only where the trial court abused its discretion and its decision is manifestly unreasonable. *In re Marriage of Horner*, 151 Wn.2d 884, 893, 93 P.3d 124 (2004).

Here, the trial court ordered the standard child support calculation as the transfer payment, without breaking the amount down for each child. There is no statute or case that requires a court to segregate the child support transfer payment for each child. Trial courts sometimes have aggregated and sometimes segregated child support amounts in the child support order. Nor does ordering an aggregated amount rather than a segregated amount effect the current child support transfer payment. If child support needs to be adjusted in the future for one child, then it could be done by agreement of the parents, or a motion to the court. Where there is no requirement to segregate the child support amount by child and prior cases affirm aggregated child support orders, the trial court did not abuse its discretion and there is no error.

**8. ATTORNEY FEES ON APPEAL SHOULD BE AWARDED TO YELENA MCGOWAN**

Respondent Yelena requests that this court order payment of reasonable attorney fees by Appellant Scott under Rule of Appellate Procedure 18.1(a), which allows an award if the right to recover is granted by statute. RCW 26.09.140 provides for such recovery: “Upon any

appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs." In determining whether to award fees, the appellate court must consider "the parties relative ability to pay" and "the arguable merit of the issues raised on appeal." *In re Marriage of Muhammad*, 153 Wn.2d 795, 807, 108 P.3d 779 (2005), quoting *In re Marriage of Leslie*, 90 Wn. App. 786, 807, 954 P.2d 330 (1998).

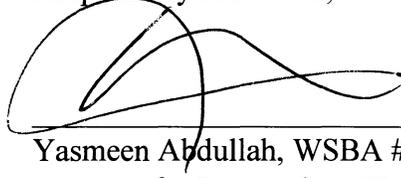
Here, the record shows that Scott has significantly more income than Yelena, while Yelena needed child support to cover basic expenses for the children. Yelena should not be forced to deplete her resources for the children to defend against Scott's appeal that is without merit. Yelena will file an affidavit of financial need pursuant to RAP 18.1(c).

#### **D. CONCLUSION**

The trial court properly denied the Appellant's request to deviate from the standard child support transfer amount. The trial court made appropriate findings that are supported by the record. Based on the forgoing argument, this court should deny the Appellant's requests for relief, affirm the trial court's orders in their entirety, and award attorney fees and costs on appeal to Yelena.

DATED THIS 30<sup>th</sup> DAY OF JULY, 2015.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, sweeping loop on the left side that extends upwards and then curves back down to the right, followed by a horizontal line that ends in a small loop.

---

Yasmeen Abdullah, WSBA # 38832  
Attorney for Respondent, Yelena McGowan

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

CERTIFICATE OF FILING AND SERVICE

I certify I caused the foregoing and its attachments, if any, to be

Filed with the court on  July 30, 2015 via

Depositing the same in the U.S. Mail, first-class postage prepaid; or

Hand delivery or courier delivery

And/or  served on Scott McGowan's Attorney of Record

by the following means:

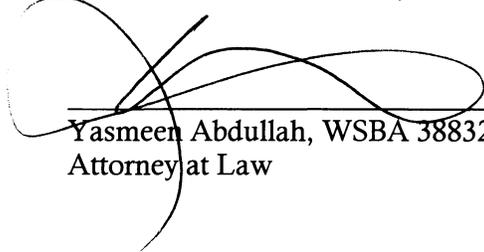
Deposit into the U.S. Mail, first-class postage prepaid on

July 30, 2015  \_\_\_\_\_;

I certify under penalty of perjury under the laws of the State of Washington the foregoing is true and correct to the best of my knowledge.

Signed at Seattle, Washington, on  July 30, 2015 .

*ABDULLAH LAW FIRM, PLLC*



Yasmeen Abdullah, WSBA 38832  
Attorney at Law

**ABDULLAH LAW FIRM, PLLC**  
9500 Roosevelt Way NE, Ste 301  
Seattle, WA 98115  
(206) 363-0455  
AbdullahLawFirm.com