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No. 731947-I

COURT OF APPEALS  
DIVISION I  
OF THE STATE OF WASHINGTON

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COURT OF APPEALS  
DIVISION I  
STATE OF WASHINGTON

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JOSHUA CONRAD WELBORN  
Appellant

v.

HEIDI MARIE MCKINNON (FKA WELBORN)  
Respondent

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REPLY BRIEF OF APPELLANT

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Presented by:  
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408 15<sup>th</sup> Ave  
Kirkland, WA 98033

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- III. **The trial Court erred by not concluding that money received for social security benefits were joint assets and should be treated as such.**
- IV. **The Trial Court erred in not including the assets Ms. McKinnon received for her retirement benefits.**

### Statutes

RCW 26.16.030

RCW 26.09.080

**1. The trial Court erred in the way the financial information was entered into SupportCalc resulting in the appellant paying too much in child support.**

The question of whether or not the court had the authority to deviate from the schedule is not being debated, what is being debated is the information that was inputted into SupportCalc resulting in child support payments that are too high for this situation. The trial court is allowed to look at the situation presented from SupportCalc and the table for child support and then deviate.

Well before the trial appellant put in all of the information into SupportCalc and came up with a payment of \$82 a month for child support. The respondent submitted an amount of \$87 dollars a month. The amount of the difference, \$5, was so small that it appeared a compromise would be easy, this is why the respondent sent an email to the appellant stating that she did not want child support. A week later during the trial the respondent changed her mind and asked the judge to determine an amount. This email was submitted as evidence at the trial. The trial court entered in incorrect information into SupportCalc and came up with an amount of \$345.16 a month, over four times the amount asked for by the respondent.

The reason for the disparity was obvious, the trial court didn't input the proper amount of medical expenses and didn't credit the appellant with any residential credit. Residential credit should have been credited to the appellant. SupportCalc defaults to 91 days of residential credit for the appellant (274 for the respondent). There is a widely-quoted statement of intent from the Senate sponsor of the bill, Senator Nelson, in which he says that significant residential time would be something more than 35% (128 overnights): 'Significant time' is not defined in the legislation. It will be determined on a case-by-case basis. The majority of parenting plans still have residential split across households in the 80/20 to 65/35 range. Presently, residential time in excess of 35 percent and up to 49.9 percent would be significant time." Clearly the threshold of 35% was met since there is a 50% split in this case. If the court wanted to deviate then it is duty bound to state that, the trial court did not which is why it must be remanded back to the trial court.

In the case of Arvey a formula was determined to determine a fair amount when custody is split. In this case the children are not "split" but we do have "joint" custody. The children spend 50 percent of the time with both parents. In

SupportCalc there is a function near the end to input the residential time, if this is not done then SupportCalc assumes the payee has primary custody, which is not the case here. The trial court did not do this. The appellant raised this issue to the judge at the reading of the judgement, the judge informed the appellant that he was free to appeal. By failing to account for the joint custody the amount is well over double the amount it should be. The fault lies with the trial court by not inputting the numbers correctly.

The respondent cites the case of *State ex rel. M.M.G. v. Graham* 935 123 Wn. App. 931, Nov. 2004. The court rejected Arvey in this case because “its application often would result in disparate financial circumstances to the detriment of the children, contrary to the intent of the child support statutes”. This would not be the situation in this case. The respondent makes nearly \$100,000 a year. The disparity in income is quite small which is why when the correct numbers were inputted into SupportCalc the child support payment came back as less than \$100 a month.

In the prior case the child support was remanded back to the trial court because it didn’t account for residential credits. The court of appeals stated “a trial court must calculate the basic child support amount and may then deviate from that amount based on the amount of residential time spent with the obligor parent, pursuant to RCW 26.19.075 , so long as doing so will not result in insufficient funds in the household receiving the support to meet the needs of the children while they are residing in that household. We remand for recalculation of the basic child support obligation and consideration of any deviation not based on *Arvey* that the court deems appropriate. Such deviation will require the trial court to enter findings of fact. RCW 26.19.035 (2), .075(3).”

Also, the respondent never argues the amount of money spent on health care by the respondent is incorrect. Due to this fact alone the child support should be remanded to the trial court for recalculation

The last line in the respondent’s argument states “because the trial court used this approved method (SupportCalc) in calculating child support, it did not commit any error at law and did not abuse its discretion”. This statement is only partially correct. SupportCalc is an approved way for determining child support in the state of Washington, the error occurred in the inputting of the numbers. If the trial court inputted \$80,000 for the respondents income resulting in her paying the appellant child support then she would be the one appealing the verdict. In this case the trial court erred in the numbers inputted for the appellant, this case must be remanded to correct these mistakes.

All of the cases the respondent quotes, McCausland, Leslie, and Graham, don’t apply because it was never argued in any of these cases that the court erred in the determination of the child support.

**II. The Trial Court erred in determining assets earned prior to marriage are not part of the marital assets.**

The marriage started on July 13<sup>th</sup>, 1996, not before. Washington state law is quite clear in that all assets acquired prior to marriage are not community property. (RCW 26.16.030.) The respondent uses the case of *Connell v. Francisco*. In this case the parties were never married and therefore the arguments aren't similar. There was no clear line for when a "stable, marital-like relationship" started in this case. In our case there is a clear line for the start of the marriage, the case of *Connell v. Francisco* would not apply. RCW 26.09.080 only applies to relationships that didn't end in marriage.

Prior to marriage both parties made roughly the same amount of money. At some points the appellant made more, at some points the respondent made more, the difference was never an issue since all finances were separate. The appellant and respondent moved in together in January of 1992 and remained unmarried until July 13<sup>th</sup>, 1996, a period of roughly 4.5 years. During this time they did not mingle resources, they kept separate bank accounts, him at US Bank and her at Seafirst. All bills were split equally. They did not live together for these years continuously either. After some time together the appellant moved in with his mother and the respondent moved in with her parents in order to save money. This situation lasted for over a year of this period. One of the reasons for the delay in marriage was due to finances and the arguments it was causing. The appellant started his 401k and saving for the future at the age of 20, while she was less frugal and racked up thousands of dollars in credit card debt. This disagreement was a large issue and a reason any commitment to marriage was delayed. It wasn't until the respondent promised to be better about saving money and spending did the decision to get married happen. When the marriage happened the appellant had thousands of dollars in retirement accounts due to being frugal and she had over 6k in credit card debt.

The respondent claims the relationship was a meretricious relationship prior to marriage. This argument makes no sense, a meretricious relationship is a term created by the Washington State legislature to define **cohabitations** that are marital in nature but not on paper. This concept was created for couples who lived together in a marriage type environment but never married. The parties in this case DID get married, there is no argument in this case when the marriage started. Even if it did there are five provisions that need to be looked at for a meretricious relationship:

1. Continuity of cohabitation – the cohabitation was off and on, it was not continuous prior to the marriage.
2. Duration of the relationship – during the 4.5 prior to the marriage there were numerous break ups. Trying to figure out where it started and stopped would be next to impossible. The legal start of this marriage is definitively July 13<sup>th</sup>, 1996.
3. Purpose of the relationship – the purpose of the cohabitation was to figure out if the parties should get married. Due to the many conflicts the relationship stopped and started many times, it was not continuous at all.

4. Pooling of resources – in no way was this criteria met. Both parties kept separate bank accounts, paid bills separately, bought cars separately, saved for the future independently. The respondent had access to a 401k at her job and never used it even though her job would match her contribution. There were many arguments that the respondent was giving away money by not using her 401k.
5. The intent of the parties – the intent of the parties was to determine compatibility of marriage.

Once again, none of the cases cited by the respondent applies to this case since our relationship did end in a marriage. There was no need for the court to decide when the de facto marriage started because the date of the marriage was never contested.

**III. The trial court erred in not determining the social security benefits received should have been split for the funds received during the marriage.**

The respondent doesn't argue the merits of the argument only the basis of the Verbatim report. All items were provided to the respondent in a timely fashion, nothing was withheld. The respondent does not deny the fact that the \$6,000 received by her was money that was back dated to our marriage and should be viewed as community property. The appellant made the argument during the trial and also spoke up about this issue during the reading of the ruling. The respondent was given every document I had and on time.

**IV. The trial court erred in not accounting for the \$12,000 the respondent will receive.**

The trial court erred mathematically and is very complicated since the judge combined two rulings into one solution, the solution was wrong mathematically.

The issue is complicated since the judge combined an overstatement of credit card payments and a retirement account that was earned by the respondent.

First, the respondent claimed she payed \$16,729 in credit card payments, the court found that this was wrong and she should have only received credit for \$3,833, an overstatement of \$12,896. The judge tries to rectify this by saying the \$12,000 in section 3.4 would account for this, it doesn't. The judge says a credit of \$6,500, which was never listed, would make up for the overpayments. It didn't and it would only make up for half of the overpayments.

In the spreadsheet the respondent still gets credit for the \$12,896 which would be fine if the appellant was given the \$12,000 from the retirement account.

Here is the breakdown as it is:

The respondent gets credit for \$12,896 that she didn't pay.  
She gets the full retirement account which based on the value from the judge should be \$24,000.

This would be a total of \$36,896.

The appellant received \$12,000 that either goes towards the overstatement of credit card payments or the retirement accounts. Either way the respondent received an extra \$24,896 that went unaccounted for.

### **Conclusion**

The trial court erred on many accounts and it should be remanded to the trial court for a more even distribution of child support and property distribution. This court should also award attorney's fees to the appellant.

Respectfully submitted this 30th day of November, 2015.

COURT OF APPEALS, DIVISION 1 OF THE STATE OF WASHINGTON

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|---|-------------------------------------|---|--------------------------|
| 3 | JOSHUA CONRAD WELBORN               | ) | Case No.: 731947-1       |
|   |                                     | ) |                          |
| 4 | Appellant,                          | ) | Declaration of Mailing   |
|   |                                     | ) |                          |
| 5 | vs.                                 | ) | Reply Brief of Appellant |
|   |                                     | ) |                          |
| 6 | HEIDI MARIE MCKINNON (FKA WELBORN), | ) |                          |
|   |                                     | ) |                          |
| 7 | Respondent                          | ) |                          |
|   |                                     | ) |                          |

8  
9 On the 30<sup>th</sup> Day of November, 2015, I served a copy of the foregoing  
10 Reply Brief of Appellant at 11630 NE 103<sup>rd</sup> Pl, Kirkland, WA 98033 by US Mail

11 I declare under perjury under the laws of the State of  
12 Washington that the foregoing is true and correct to the best of my knowledge  
13 and belief.

14 Dated this 30th of November, 2015

15 

16 Joshua Conrad Welborn, Pro Se  
408 15<sup>th</sup> Ave

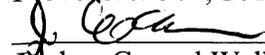
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November 30<sup>th</sup>, 2015

  
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