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IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In re the Marriage of:

TRISHA ROBIN BRADLEY,

Respondent,

and

FRANCIS THOMAS BRADLEY,

Appellant.

APPEAL NO. 42645-5-II

REPLY BRIEF

I. INTRODUCTION

This appeal is nothing more than a "back door" attempt to appeal an Order of Child Support entered following trial in 2008. What makes the appeal of more concern is the fact that the 2008 Order followed the Appellant's request at trial for the Court to give him an additional two years to complete school so he could obtain his bachelor's degree in order to support his children.

These proceedings were commenced to enforce the terms of the 2008 Order that Mr. Bradley originally requested, but which he now disavows so that he can continue his ways and, in effect, force his children and his former wife to subsidize his lifestyle to their detriment and thereby avoid his duty of support.

At least at time of trial he was a full time student as of the summer of 2006 and now almost six years later we find that he obtained his bachelor's degree in June 2010, was no longer a student, and when these proceedings were commenced several months following his graduation, he was still trying to get into graduate school while at the same time working on a limited part time basis at a level close to minimum wage.

The trial court in 2008 granted Mr. Bradley's request in setting child support, but ordered that commencing in June 2010 support would be recalculated using either his actual income if employed full time (more than 35 hours per week) or, if he decided to remain unemployed or underemployed, his income would be imputed based upon median net income. Since the Court acquiesced to Mr. Bradley's request he did not appeal the 2008 Order nor has he attempted to petition the Court for a modification of that Order.

II. STATEMENT OF THE CASE

Respondent does not make a separate statement of the case as pursuant to RAP 10.3 (b)

III. ARGUMENT

A) LAW OF THE CASE ISSUE

Appellant asserts that the revision court determined that Paragraph 3.22 of the 2008 Order has become the law of the case and that such doctrine was, in fact, inapplicable. Respondent believes that the argument is not persuasive for the following reasons:

1) The revision court found only that there was no absence of Mr. Bradley's earnings and that Mr. Bradley's actual earnings were supplied to the Court. (CP 88).

Appellant's Brief at page 24 plainly acknowledges that Mr. Bradley did not and does not challenge the finding that Mr. Bradley is voluntarily underemployed. It is also not asserted that the record does not clearly substantiate Mr. Bradley's underemployment and minimum levels of income;

2) Appellant concedes at page 21 of the Appellant's Brief that the revision court did not state that paragraph 3.22 was the law of the case;

3) An oral opinion or statement by the Court may not be substituted for the final order and has

no effect unless it is incorporated into the written order signed by the Court. *Dillenburg v. Maxwell*, 70 Wn.2d 331, 413 P.2d 940 (1966), modified, 70 Wn.2d 331, 422 P.2d 783 (1967). In the present case the revision court made no such finding or conclusion that paragraph 3.22 was the law of the case. (CP 88); and

4) It is also well established that a trial court or, as here, a revision court is always able to change its views that were perhaps expressed orally and when the final order is signed, the court's real views are established in the written findings. *State v. Smith*, 68 Wn. App. 201, 842 P.2d 494 (Div. I 1992), *Osborne v. Osborne*, 60 Wn.2d 163, 372 P.2d 538 (1962), and *State v. Superior Court of Washington for Kitsap County*, 46 Wash. 395, 90 P. 258 (1907).

B) PRIORITIES OF RCW 26.19.071 (6)

Respondent also strongly disagrees with Appellant's assertion that the imputation of Mr. Bradley's income must follow the priorities set forth in RCW 26.19.071 (6) for the following reasons:

1) The only change to RCW 26.19.071 (6) from the prior statute was to establish priorities "in the absence of records of a parent's actual earnings...";

The revision court found unequivocally that there was no such absence of Mr. Bradley's earnings (CP 88);

2) Both the prior RCW 26.19.071 and the present RCW 26.19.071 contain identical language that "The court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed.";

3) Appellant's Brief at page 24 concedes that Mr. Bradley did not and does not challenge the finding that he was voluntarily underemployed nor does Mr. Bradley assert that such finding was not supported by the record;

4) Appellant's continued reliance on the oral statements of the court remain irrelevant and is contrary to the holding of *Dillenburg v. Maxwell*, 70 Wn.2d 331, 422 P.2d 783 (1967) which held that such statements have no effect unless incorporated into the written order;

5) Even Appellant agrees that if the statute's plain language is unambiguous, the statute is to be enforced in accordance with the plain meaning. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). RCW 26.19.071 is very clear. Priorities are to be used and applied only when there is an absence of records of a parent's actual earnings. However, the revision court expressly found that there was no such absence of Mr. Bradley's earnings. (CP 88);

6) Appellant argues that it is unclear what is meant by the phrase "in the absence of records of a parent's actual earnings..." as contained in RCW 26.19.071 and complains that there is no definition of the term "records". This argument seems to be internally inconsistent when, as in these proceedings, there was no challenge that the "records" did not substantiate Mr. Bradley's underemployment and at page 24 of Appellant's Brief has expressly conceded that he does not challenge the finding that Mr. Bradley is not voluntarily unemployed;

7) Appellant seems to be perplexed as to how a court could utilize the first priority, "full time earnings at the current rate of pay..." (RCW 26.19.071 (6)) without some record of the parent's actual earnings. This argument is also without merit as it is easily foreseen that there could or would be circumstances where income tax returns are unavailable, pay stubs are not available, or affidavits concerning work history are not submitted and the only information the court may have is some information as to current rate of pay. Here, as it is undoubtedly in many other cases, there is ample evidence of Mr. Bradley's earnings that he himself provided to the court.

Mr. Bradley submitted numerous pay stubs from 2010 and 2011, his tax returns for 2008 and 2009 (CP 130-145), his 2010 tax return with yet additional pay stubs (CP 203-214), and an affidavit stating his hourly pay and the number of hours he claimed to be working (CP 38-39);

C) ATTORNEY'S FEES

Mrs. Douay requests that this court award her attorney's fees on appeal pursuant to RCW 26.09.140

and RAP 18.1. The obvious hardship imposed on Mrs. Douay from these proceedings and her long time subsidy of Mr. Bradley's support occasioned by his voluntary underemployment would be fair and equitable under these circumstances.

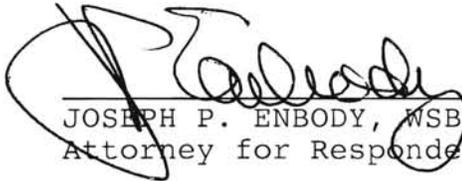
IV. CONCLUSION

This Court should uphold the decision of the revision court. Mr. Bradley has conceded that he is voluntarily underemployed, has not challenged the factual basis for that finding, and has submitted to the revision court numerous records as to his actual earnings. Since he has supplied that information, since there has been no challenge of any kind to the finding of the revision court that there was no absence of Mr. Bradley's actual earnings, since Mr. Bradley did not appeal the 2008 order that granted him the relief that he had requested, and since the statute both before and after the 2009 amendment to RCW 26.09.171 remain unchanged except for those instances where there is an absence of such records, the plain meaning of the statute should be followed and finally force Mr. Bradley to live up to his responsibilities as a

parent rather than allow his children to suffer due solely to Mr. Bradley's indolence. This entire proceeding would have been rendered unnecessary had Mr. Bradley simply chosen to find employment of more than 35 hours a week at virtually any level of pay that met or exceeded even minimum wage.

DATED this 5th day of March, 2012.

Respectfully Submitted,



JOSEPH P. ENBODY, WSBA #1796
Attorney for Respondent

APPENDIX A

RCW 26.19.071 (6)

PRIOR TO 2009 AMENDMENTS

Consideration of minimum need standard is mandatory in every calculation of child support, even when combined monthly net income of parents is over \$600. *Matter of Marriage of McDaniel* (1997) 87 Wash.App. 827, 947 P.2d 1225, on subsequent appeal 117 Wash.App. 1083. Child Support ⇨ 100

On modification of child support provisions of dissolution court's order, trial court had discretion to deviate from minimum need standard based on statutory reasons, but trial court had to enter written findings and conclusions stating its reasons for deviation or denial of deviation. *Matter of Marriage of McDaniel* (1997) 87 Wash.App. 827, 947 P.2d 1225, on subsequent appeal 117 Wash.App. 1083. Child Support ⇨ 357

Trial court may consider minimum need standard when calculating back support. *Matter of Marriage of McDaniel* (1997) 87 Wash.App. 827, 947 P.2d 1225, on subsequent appeal 117 Wash.App. 1083. Child Support ⇨ 450

4. Relative means

Custodial father was required to pay noncustodial mother \$1,500 at time that she received children for six-week summer visitation in order to assist with expenses during that time, and mother was relieved of presumptive minimum support obligation of \$25 per child per month, given that father's gross income was approximately \$5,848 per month and mother's income was approximately \$500. In re *Marriage of Casey* (1997) 88 Wash.App. 662, 967 P.2d 982, reconsideration denied. Child Support ⇨ 146

5. Discretion of court

Trial court's use of extrapolation method to set divorced husband's child support obligation at \$754.26 for each of the two younger children and \$932.49 for the older child was not improper; husband and wife's monthly income exceeded \$7,000, use of extrapolation method was discretionary, husband's child support obligation was less than 30 percent of his net income, and the absence of more specific findings regarding the use of the extrapolation method did not require vacation

of the trial court's order. *Clarke v. Clarke* (2002) 112 Wash.App. 370, 48 P.3d 1032. Child Support ⇨ 261; Child Support ⇨ 341

Statutory schedule from which basic child support obligations for dependent children are determined in relation to the parents' combined monthly net incomes establishes an upper limit at a combined monthly net income of \$7,000; when combined incomes exceed \$7,000, a court may set support up to the maximum set forth on the schedule, or it may exceed that amount upon written findings of fact. In re *Marriage of Scanlon and Witrak* (2001) 109 Wash.App. 167, 34 P.3d 877, amended on denial of reconsideration, review dismissed 146 Wash.2d 1014, 52 P.3d 519, review denied 147 Wash.2d 1026, 62 P.3d 889. Child Support ⇨ 145

Trial court acted within its discretion, in dissolution of marriage proceeding, when it limited former husband's total child support obligations, including those from a previous relationship, to 45% of his net income, where two of former husband's children lived with him, and former husband would still face a challenge living on and providing for the children who lived with him on the remaining 55% of his income. *Bell v. Bell* (2000) 101 Wash.App. 366, 4 P.3d 849. Child Support ⇨ 84

6. Evidence

Substantial evidence supported trial court's upward deviation from child

support schedule, although child support award exceeded 50% of father's then current monthly earnings; father's net monthly earnings represented only portion of his economic resources, and there was substantial evidence that his income would probably increase in the relatively near future. *Matter of Marriage of Glass* (1992) 67 Wash.App. 378, 835 P.2d 1054. Child Support ⇨ 148

7. Findings

Findings of fact were insufficient to justify child support modification order based on extrapolation above upper limit of economic table; former wife asked for additional support for orthodontia, missed travel opportunities, missed summer camps, and better computers and accessories, but no specific cost amounts for these needs appeared in the record, findings did not support children's future need of any of these expenses, and record lacked specific findings relating to totality of parents' financial circumstances. In re *Marriage of Daubert and Johnson* (2004) 99 P.3d 401, amended on reconsideration. Child Support ⇨ 341

8. Review

Abuse of discretion is standard of review for trial court's deviation from standard calculation of child support. In re *Marriage of Casey* (1997) 88 Wash.App. 662, 967 P.2d 982, reconsideration denied. Child Support ⇨ 556(2)

26.19.070. Repealed by Laws 1991, Sp.Sess., ch. 28, § 8, eff. Sept. 1, 1991

Historical and Statutory Notes

The repealed § 26.19.070, which required child support to be determined according to this chapter in proceedings under titles 13, 26, and 74, which required written findings, which required that all income be disclosed and consid-

ered, which required worksheets, which required specific reasons for deviation from a standard calculation, and which specified the content of an order, was derived from Laws 1990, 1st Ex.Sess., ch. 2, § 6.

26.19.071. Standards for determination of income

(1) **Consideration of all income.** All income and resources of each parent's household shall be disclosed and considered by the

26.19.071

DOMESTIC RELATIONS

court when the court determines the child support obligation of each parent. Only the income of the parents of the children whose support is at issue shall be calculated for purposes of calculating the basic support obligation. Income and resources of any other person shall not be included in calculating the basic support obligation.

(2) **Verification of income.** Tax returns for the preceding two years and current paystubs shall be provided to verify income and deductions. Other sufficient verification shall be required for income and deductions which do not appear on tax returns or paystubs.

(3) **Income sources included in gross monthly income.** Except as specifically excluded in subsection (4) of this section, monthly gross income shall include income from any source, including:

- (a) Salaries;
- (b) Wages;
- (c) Commissions;
- (d) Deferred compensation;
- (e) Overtime;
- (f) Contract-related benefits;
- (g) Income from second jobs;
- (h) Dividends;
- (i) Interest;
- (j) Trust income;
- (k) Severance pay;
- (l) Annuities;
- (m) Capital gains;
- (n) Pension retirement benefits;
- (o) Workers' compensation;
- (p) Unemployment benefits;
- (q) Spousal maintenance actually received;
- (r) Bonuses;
- (s) Social security benefits; and
- (t) Disability insurance benefits.

CHILD SUPPORT SCHEDULE

(4) **Income sources excluded from following income and resources shall included in gross income:**

- (a) Income of a new spouse or in household;
- (b) Child support received from other parent;
- (c) Gifts and prizes;
- (d) Temporary assistance for needy families;
- (e) Supplemental security income;
- (f) General assistance; and
- (g) Food stamps.

Receipt of income and resources from other parent, needy families, supplemental security income and food stamps shall not be a reason for recalculation.

(5) **Determination of net income.** Net income shall be disclosed and deducted from gross income to arrive at net monthly income:

- (a) Federal and state income tax;
- (b) Federal insurance contributions;
- (c) Mandatory pension plan payments;
- (d) Mandatory union or professional dues;
- (e) State industrial insurance payments;
- (f) Court-ordered spousal maintenance actually paid;

(g) Up to two thousand dollars of child support payments actually made if the court orders such payments in the tax years preceding the earlier of the parties separated with intent to marry or the year in which the parties filed for divorce.

(h) Normal business expenses of self-employed persons. Justification for a business expense deduction about a parent shall not be a reason to deviate from the schedule.

Items deducted from gross income shall not be a reason to deviate from the schedule.

(6) **Imputation of income.** Income shall be imputed to a parent when the parent is voluntarily unemployed or underemployed.

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child support obligation of parents of the children whose income for purposes of calculating child support and resources of any other person for calculating the basic support

returns for the preceding two years provided to verify income and resources shall be required for income that does not appear on tax returns or

gross monthly income. Except

(4) of this section, monthly income from any source, including:

CHILD SUPPORT SCHEDULE

26.19.071

(4) **Income sources excluded from gross monthly income.** The following income and resources shall be disclosed but shall not be included in gross income:

- (a) Income of a new spouse or income of other adults in the household;
- (b) Child support received from other relationships;
- (c) Gifts and prizes;
- (d) Temporary assistance for needy families;
- (e) Supplemental security income;
- (f) General assistance; and
- (g) Food stamps.

Receipt of income and resources from temporary assistance for needy families, supplemental security income, general assistance, and food stamps shall not be a reason to deviate from the standard calculation.

(5) **Determination of net income.** The following expenses shall be disclosed and deducted from gross monthly income to calculate net monthly income:

- (a) Federal and state income taxes;
- (b) Federal insurance contributions act deductions;
- (c) Mandatory pension plan payments;
- (d) Mandatory union or professional dues;
- (e) State industrial insurance premiums;
- (f) Court-ordered spousal maintenance to the extent actually paid;

(g) Up to two thousand dollars per year in voluntary pension payments actually made if the contributions were made for the two tax years preceding the earlier of the (i) tax year in which the parties separated with intent to live separate and apart or (ii) tax year in which the parties filed for dissolution; and

(h) Normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about which there is disagreement.

Items deducted from gross income under this subsection shall not be a reason to deviate from the standard calculation.

(6) **Imputation of income.** 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 information to the contrary, a parent's imputed income shall be based on the median income of year-round full-time workers as derived from the United States bureau of census, current populations reports, or such replacement report as published by the bureau of census.

[1997 c 59 § 4; 1993 c 358 § 4; 1991 sp.s. c 28 § 5.]

Historical and Statutory Notes

Severability—Effective date—Captions not law—1991 sp.s. c 28: See notes following RCW 26.09.100.

Laws 1993, ch. 358, § 4, in subsec. (6), inserted the fifth sentence, prohibiting imputing income to a parent unemployed or underemployed due to com-

pliance with court-ordered reunification efforts.

Laws 1997, ch. 59, § 4, in subsec. (4), in subd. (d) and in the last paragraph of subsec. (4), substituted "[T]emporary assistance for needy families" for "[A]id to families with dependent children".

Library References

Child Support Ⓒ87 to 99.
Westlaw Topic No. 76E.

C.J.S. Parent and Child §§ 158 to 159, 167.

Research References

ALR Library

- 76 ALR 5th 191, Basis for Imputing Income for Purpose of Determining Child Support Where Obligor Spouse is Voluntarily Unemployed or Underemployed.
39 ALR 5th 1, Decrease in Income of Obligor Spouse Following Voluntary Termination of Employment as Basis for Modification of Child Support Award.
89 ALR 2nd 7, Change in Financial Condition or Needs of Parents or Children as Ground for Modifica-

tion of Decree for Child Support Payments.

Treatises and Practice Aids

- 1 Wash. Prac. Series § 21.27, Child Support.
19 Wash. Prac. Series § 14.6, Responsibility for Payment of Debts-Support of Stepchildren.
20 Wash. Prac. Series § 34.9, Factors Considered in Awarding Maintenance-Ability to Meet Own Needs While Paying Maintenance.

CHILD SUPPORT SCHEDULE

- 20 Wash. Prac. Series § 37.7, Child Support Schedule and Worksheets-Determining the Parents' Income.
20 Wash. Prac. Series § 38.20, Change of Circumstances-What

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1. In general

When expenses are included as a reimbursement on an employee's pay check, it is proper to exclude that portion from income in calculating child support, because the payment is an offset for expenses; to the extent that employee was reimbursed for expense that income should be deducted from his monthly income. *Rusch v. Rusch* (2004) 98 P.3d 1216. Child Support Ⓒ 261

In child support modification proceedings, father could not claim business expenses as an offset to his income absent evidence that it was a nontaxable reimbursement. *Rusch v. Rusch* (2004) 98 P.3d 1216. Child Support Ⓒ 2

On revision of determination by commissioner, the superior court has full jurisdiction over the case. In *Marriage of Dodd* (2004) 120 Wa

APPENDIX B

RCW 26.19.071 (6)

AS AMENDED IN 2009

Wash.2d 1008, 139 P.3d 349, reversed 159 Wash.2d 607, 152 P.3d 1013, as amended. Child Support ⇌ 145; Child Support ⇌ 148

3.5. Extraordinary need

Statutory child support schedule did not limit support awards above the advisory amount when parental income exceeded \$7,000 to those based on "extraordinary" needs but, instead, provided only that the court had discretion to award an amount above the advisory amount "upon written findings," and case law required only that the additional support be necessary and reasonable in light of the parents' financial circumstances. In re Marriage of Krieger and Walker (2008) 147 Wash.App. 952, 199 P.3d 450, reconsideration denied. Child Support ⇌ 145

While the trial court correctly stated that sufficient findings had to support modified child support award above the advisory amount for combined monthly incomes over \$7,000, the trial court effectively applied the deviation standard by requiring a showing of "extraordinary need"; by asserting that extraordinary need had to exist before the court could set an award above the advisory amount, the court impermissibly narrowed the scope of needs and expenses that could support such an award. In re Marriage of Krieger and Walker (2008) 147 Wash.App. 952, 199 P.3d 450, reconsideration denied. Child Support ⇌ 215

4. Relative means

When a parent is ordered to pay particular expenses for the children in a child support order, the record must include what those costs are generally, and the court must consider each parent's ability to share those expenses in light of their economic circumstances and in light of their total child support obligation. McCausland v. McCausland (2005) 129 Wash.App. 390, 118 P.3d 944, review granted in part 157 Wash.2d 1008, 139 P.3d 349, reversed 159 Wash.2d 607, 152 P.3d 1013, as

amended. Child Support ⇌ 82; Child Support ⇌ 214

5. Discretion of court

Trial court's repayment order for ex-husband's overpayment of past child support pursuant to original order on ex-wife's motion for upward adjustment, after order was reversed on appeal and cause remanded for recalculation of support, created a substantial hardship on the children by further decreasing an already reduced child support award and was therefore an abuse of discretion. In re Marriage of Krieger and Walker (2008) 147 Wash.App. 952, 199 P.3d 450, reconsideration denied. Child Support ⇌ 559

7. Findings

Findings of fact were insufficient to justify child support modification order based on extrapolation above upper limit of economic table; former wife asked for additional support for orthodontia, missed travel opportunities, missed summer camps, and better computers and accessories, but no specific cost amounts for these needs appeared in the record; findings did not support children's future need of any of these expenses, and record lacked specific findings relating to

tality of parents' financial circumstances. In re Marriage of Daubert and Johnson (2004) 124 Wash.App. 483, 99 P.3d 401, amended on reconsideration. Child Support ⇌ 341

8. Review

Trial court's modified child support award of the advisory amount for combined monthly incomes over \$7,000 failed to consider the relative financial circumstances of both parents, which was error, and thus, case would be remanded for the trial court to recalculate support to ensure that it maintained children's standard of living at a level commensurate with that of both parents and was equitably apportioned between them; ex-wife's monthly net income was \$5,246.95, which, even when combined with the \$800 support payment, barely covered her total household and child-related expenses of approximately \$5,625.00, and, if ex-husband's child support obligation was limited to the advisory amount, it was only a fraction of his monthly net income of \$9,843. In re Marriage of Krieger and Walker (2008) 147 Wash.App. 952, 199 P.3d 450, reconsideration denied. Child Support ⇌ 145; Child Support ⇌ 559

26.19.071. Standards for determination of income

(1) **Consideration of all income.** All income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent. Only the income of the parents of the children whose support is at issue shall be calculated for purposes of calculating the basic support obligation. Income and resources of any other person shall not be included in calculating the basic support obligation.

(2) **Verification of income.** Tax returns for the preceding two years and current paystubs shall be provided to verify income and deductions. Other sufficient verification shall be required for income and deductions which do not appear on tax returns or paystubs.

(3) **Income sources included in gross monthly income.** Except as specifically excluded in subsection (4) of this section, monthly gross income shall include income from any source, including:

- (a) Salaries;
- (b) Wages;
- (c) Commissions;

- (d) Deferred compensation;
- (e) Overtime, except as excluded for income in subsection (4)(h) of this section;
- (f) Contract-related benefits;
- (g) Income from second jobs, except as excluded for income in subsection (4)(h) of this section;
- (h) Dividends;
- (i) Interest;
- (j) Trust income;
- (k) Severance pay;
- (l) Annuities;
- (m) Capital gains;
- (n) Pension retirement benefits;
- (o) Workers' compensation;
- (p) Unemployment benefits;
- (q) Maintenance actually received;
- (r) Bonuses;
- (s) Social security benefits;
- (t) Disability insurance benefits; and
- (u) Income from self-employment, rent, royalties, contracts, proprietorship of a business, or joint ownership of a partnership or closely held corporation.

(4) **Income sources excluded from gross monthly income.** The following income and resources shall be disclosed but shall not be included in gross income:

- (a) Income of a new spouse or new domestic partner or income of other adults in the household;
- (b) Child support received from other relationships;
- (c) Gifts and prizes;
- (d) Temporary assistance for needy families;
- (e) Supplemental security income;
- (f) General assistance;
- (g) Food stamps; and
- (h) Overtime or income from second jobs beyond forty hours per week averaged over a twelve-month period worked to provide for a current family's needs, to retire past relationship debts, or to retire child support debt, when the court finds the income will cease when the party has paid off his or her debts.

Receipt of income and resources from temporary assistance for needy families, supplemental security income, general assistance, and food stamps shall not be a reason to deviate from the standard calculation.

(5) **Determination of net income.** The following shall be disclosed and deducted from gross monthly income:

- (a) Federal and state income taxes;
- (b) Federal insurance contributions actually deducted;
- (c) Mandatory pension plan payments;
- (d) Mandatory union or professional dues;
- (e) State industrial insurance premiums;
- (f) Court-ordered maintenance to the extent of the parent's contributions actually made if the parent has not been paying child support contributions during the one-year period preceding the child support order unless there is evidence that contributions were made for the purpose of evading the order; and
- (g) Up to five thousand dollars per year of contributions actually made if the parent has not been paying child support contributions during the one-year period preceding the child support order unless there is evidence that contributions were made for the purpose of evading the order.

(h) Normal business expenses and self-employment expenses of self-employed persons. Justification shall be required for an expense deduction about which there is disagreement.

Items deducted from gross income under this subsection shall not be a reason to deviate from the standard calculation.

(6) **Imputation of income.** The court shall impute income to a parent when the parent is voluntarily underemployed. The court shall determine if a parent is voluntarily underemployed or voluntarily underemployed based on the parent's work history, education, health, and other factors. A court shall not impute income to a parent who is employed on a full-time basis, unless the court finds that the parent is voluntarily underemployed and finds that the parent's income shall not be imputed for an unemployed parent to the extent that the parent is significantly underemployed due to the parent's court-ordered reunification efforts under a voluntary placement agreement with an agency. In the absence of records of a parent's actual earnings, the court shall impute a parent's income in the following order:

- (a) Full-time earnings at the current rate of earnings;
- (b) Full-time earnings at the historical rate of earnings, such as employment security benefits;
- (c) Full-time earnings at a past rate of earnings if the parent is incomplete or sporadic;
- (d) Full-time earnings at minimum wage if the parent resides in a public housing project, the parent has a receipt for earnings, is recently coming off public assistance, is unemployable, supplemental security income recipient, or has been released from incarceration, or

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nt ownership of a partnership or closely

ded from gross monthly income. The
ces shall be disclosed but shall not be

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from other relationships;

or needy families;
ncome;

om second jobs beyond forty hours per
e-month period worked to provide for a
tire past relationship debts, or to retire
court finds the income will cease when
er debts.

sources from temporary assistance for
security income, general assistance, and
reason to deviate from the standard

(5) **Determination of net income.** The following expenses shall be disclosed and deducted from gross monthly income to calculate net monthly income:

- (a) Federal and state income taxes;
- (b) Federal insurance contributions act deductions;
- (c) Mandatory pension plan payments;
- (d) Mandatory union or professional dues;
- (e) State industrial insurance premiums;
- (f) Court-ordered maintenance to the extent actually paid;

(g) Up to five thousand dollars per year in voluntary retirement contributions actually made if the contributions show a pattern of contributions during the one-year period preceding the action establishing the child support order unless there is a determination that the contributions were made for the purpose of reducing child support; and

(h) Normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about which there is disagreement.

Items deducted from gross income under this subsection shall not be a reason to deviate from the standard calculation.

(6) **Imputation of income.** 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, general assistance-unemployable, 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.

[2009 c 84 § 3, eff. Oct. 1, 2009; 2008 c 6 § 1038, eff. June 12, 2008; 1997 c 59 § 4; 1993 c 358 § 4; 1991 sp.s. c 28 § 5.]

Historical and Statutory Notes

Effective date—2009 c 84: See note following RCW 26.19.020.

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

2008 Legislation

Laws 2008, ch. 6, § 1038, in subsec. (3)(q) deleted "Spousal", and capitalized "maintenance"; in subsec. (4)(a) inserted "or new domestic partner"; and in subsec. (5)(f) deleted "spousal".

2009 Legislation

Laws 2009, ch. 84, § 3, in subsecs. (3)(e) and (3)(g), added the exception; inserted subsec. (3)(u); inserted subsec. (4)(h); and rewrote subsecs. (5)(g) and (6). Subsections (5)(g) and (6) formerly read:

"(6) **Imputation of income.** 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 histo-

ry, 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 information to the contrary, a parent's imputed income shall be based on the median income of year-round full-time workers as derived from the United States bureau of census, current populations reports, or such replacement report as published by the bureau of census."

Research References

ALR Library

- 76 ALR 5th 191, Basis for Imputing Income for Purpose of Determining Child Support Where Obligor Spouse is Voluntarily Unemployed or Underemployed.
- 39 ALR 5th 1, Decrease in Income of Obligor Spouse Following Voluntary Termination of Employment as Basis for Modification of Child Support Award.
- 89 ALR 2nd 7, Change in Financial Condition or Needs of Parents or Children as Ground for Modification of Decree for Child Support Payments.

Treatises and Practice Aids

- 19 Wash. Prac. Series § 14.6, Responsibility for Payment of Debts—Support of Stepchildren.
- 20 Wash. Prac. Series § 34.9, Factors Considered in Awarding Maintenance—Ability to Meet Own Needs While Paying Maintenance.
- 20 Wash. Prac. Series § 37.7, Child Support Schedule and Worksheets—Determining the Parents' Income.
- 20 Wash. Prac. Series § 38.20, Change of Circumstances—What

Constitutes a Sufficient Change of Circumstances.

Notes of Decision

Remand 19

1. In general

Trial court in child support proceedings was required to impute income to wife during period when she was unemployed; wife demonstrated her employability when she held a job at an accounting office, and the mere fact that she chose to quit her job did not render her employment status involuntary. *Goodell v. Goodell* (2005) 130 Wash.App. 381, 122 P.3d 929. Child Support ⇐ 88

While child support worksheets are mandatory in determining amount of child support, statute does not require that the court make a precise determination of income; instead, the court is required to consider all income and resources of each parent's household. *In re Marriage of Marzetta* (2005) 129 Wash.App. 607, 120 P.3d 75, review denied 157 Wash.2d 1009, 139 P.3d 349. Child Support ⇐ 146; Child Support ⇐ 215

14. Voluntary underemployment or unemployment—In general

Whether a parent is voluntarily underemployed, such that the court is required to impute income to the parent for purposes of calculating child support, is determined based on work history, education, health, age, and other relevant factors. *In re Custody of BJB* (2008) 146 Wash.App. 1, 189 P.3d 800, review denied 165 Wash.2d 1037, 205 P.3d 131. Child Support ⇐ 88

The court is required to impute income to a voluntarily underemployed parent for purposes of calculating child support. *In re Custody of BJB* (2008) 146 Wash.App. 1, 189 P.3d 800, review denied 165 Wash.2d 1037, 205 P.3d 131. Child Support ⇐ 88

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STATE OF WASHINGTON
BY _____
DEPUTY

IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In re the Marriage of:
TRISHA ROBIN BRADLEY,
Respondent,
and
FRANCIS THOMAS BRADLEY,
Appellant.

APPEAL NO. 42645-5-II
AFFIDAVIT OF MAILING

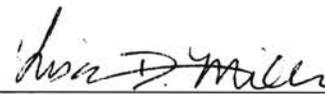
STATE OF WASHINGTON)
: ss
COUNTY OF L E W I S)

LISA D. MILLER, being first duly sworn on
oath, deposes and states as follows:

On the 5th day of March, 2012, I caused to be
deposited with the United States Postal Service at
Centralia, Washington, first class postage prepaid,
a copy of the Reply Brief, addressed to:

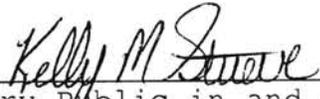
John McKerricher
Mano, McKerricher & Paroutaud
Post Office Box 1123
Chehalis, WA 98532

DATED this 5th day of March, 2012.


LISA D. MILLER

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SIGNED AND SWORN TO before me this 5th day of
March, 2012.



Notary Public in and for the
State of WA, residing at: TENINO
My Commission Expires: 09/25/2012
Printed Name: KELLY M. STUEVE