

NO. 42705-2-II

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

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In re the Marriage of:

MARK WILLIAM STOHR,

Appellant,

and

HEIDI RIE STOHR,

Respondent.



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**BRIEF OF APPELLANT**

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## INTRODUCTION

When the parties' 16-year marriage ended in divorce, the trial court entered a decree ordering Mark to pay maintenance for four years. The court calculated maintenance by imputing Mark's annual gross income at \$200,000, where much of Mark's income is from sales commissions. But shortly after the parties' dissolution, Mark's commissions plummeted, and his total income decreased by more than 50%.

Mark was earning less than his combined maintenance and child support payment. Unable to meet his maintenance obligation, Mark moved to modify maintenance. The trial court found that Mark's significant income reduction was a substantial change in circumstances, justifying a modification.

But the court modified maintenance using a complicated formula that increased maintenance. The court plainly erred in increasing maintenance, having found that Mark's reduced income justified a maintenance modification. The court compounded this error by increasing the maintenance term. The result is that Mark maintenance obligation increased by at least \$113,000, and possibly much more. This increase is inconsistent with Mark's changed circumstances. This Court should reverse.

### **ASSIGNMENTS OF ERROR**

1. The trial court erred in entering its order re modification of maintenance, increasing Mark's maintenance obligations. CP 144-53.

2. The trial court erred in entering its order of child support, modification of final order, increasing Mark's maintenance obligations. CP 154-201.

3. The trial court erred in entering its order re motion for reconsideration, denying Mark's motion for reconsideration. CP 250-54.

### **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Did the trial court abuse its discretion by increasing Mark's maintenance obligation, after finding that Mark's dramatically reduced income was a substantial change in circumstances justifying a modification?

2. Did the trial court abuse its discretion by increasing Mark's maintenance obligation, even though Heidi never asked to increase maintenance or proved a substantial change in circumstances justifying the increase?

## STATEMENT OF THE CASE AND PROCEDURAL HISTORY

**A. Shortly after the parties' divorce was finalized, Mark's income dropped by more than 50%.**

Mark and Heidi Stohr<sup>1</sup> dissolved their 16-year marriage in December 2008. CP 10-19; 8/9/11 RP 14. The court imputed the parties' incomes: Mark, who is largely commission based, at \$16,667 per month gross, and Heidi, who was voluntarily unemployed, at \$2,619. CP 3. The court awarded Heidi 55% of the community property, and four years of maintenance, finding that with retraining she had "the ability to secure employment, having previously worked in the field of Nuclear Medicine." CP 3, 6, 12. The court also ordered that Heidi could continue living in the mortgage-free family home until it sold, but that she did not have to list it for sale until August 2013. CP 5, 9. And the court ordered Mark to pay child support for the parties' two teenagers, then 14 and 16. CP 22.

In year one, beginning July 2008, Mark's monthly maintenance obligation was \$4,725. CP 12, 22. With child support, his total monthly obligation was \$6,000. *Id.* His total monthly obligation remained \$6,000 in year two, but the

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<sup>1</sup>This brief refers to the parties by their first names to avoid confusion. No disrespect is intended.

maintenance component increased slightly – \$175 per month, apparently to offset the same decrease in child support. *Id.* In year three, Mark's monthly maintenance obligation decreased by \$600 to \$4,300, and in year four, his monthly maintenance obligation decreased another \$1,100 to \$3,200. *Id.* Mark's child support also decreased significantly as one of the parties' children turned 18. *Id.*

By May 2009, just less than one year into the four-year maintenance term, Mark's income had plummeted to less than half of the \$200,000 imputed income upon which the maintenance award was based. CP 57. Mark, a sales representative, sells diagnostic imaging machines. *Id.* “[D]rastic changes” in his industry were in full swing shortly after trial. *Id.* The industry was hit hard by the economic crisis and the credit crisis in general, as well as the Health Care Reform Act. CP 56-57. This downturn was compounded by the “deterioration in the capital equipment market in health care” fields. *Id.*

Mark's employer laid-off 700 employees. CP 56. Mark kept his job, but his income plummeted to \$8,213.50 gross per month – less than half of the gross income upon which the trial court had based the maintenance award. CP 3, 21, 57. Mark's net monthly

income – \$5,538 – was less than his maintenance and child support obligations. CP 12, 22, 57.

**B. The trial court found adequate cause to reduce Mark's maintenance obligation.**

In May 2009, Mark moved to modify the maintenance award based on his dramatically reduced income. CP 57-58, 93-95. Mark was no longer earning enough to pay maintenance and child support, much less any personal expenses. CP 57-58. He had been taking money out of savings to pay maintenance, but was "tapped out." CP 57. He made his last full maintenance payment in March 2009, but could only pay \$1,777 (of \$4,725 due) in April. *Id.* He kept current on his child-support payments. *Id.*

Mark did not ask to reduce child support. *Id.* He moved to modify the maintenance award to reflect his substantially changed circumstances. CP 57-58, 93-95. Although Heidi opposed a modification, she could not and did not refute Mark's decreased income. CP 71-80, 103-08, 109-17.

The trial court found that Mark's decreased income was adequate cause for a maintenance modification. 7/1/09 RP 33. The trial court ordered the parties (or more likely their attorneys) to calculate maintenance each month based on the following formula:

- ◆ Although Mark's base income is \$82,500, the court used \$90,000 to account for some commissions. 7/1/09 RP 36.
- ◆ From his \$7,500 gross monthly income, Mark was to subtract his taxes (based on a single person with two exemptions), which the court established was 15%. 7/1/09 RP 53-54, 58-59.
- ◆ Mark was then to pay Heidi one-half of his net income. 7/1/09 RP 58-60.
- ◆ Mark was also to pay Heidi one-half of all commissions. 7/1/09 RP 60.
- ◆ Although the court had previously ruled, consistent with Mark's request, that it would not modify child support, the court ordered the parties to calculate child support based on their adjusted incomes. 7/1/09 RP 33, 59.
- ◆ Mark would pay child support out of his half of his net income. 7/1/09 RP 58.
- ◆ Heidi was to receive maintenance tax-free, and Mark could not deduct maintenance. 7/1/09 RP 60-61.

The court found Mark in contempt for failing to pay the entire amount due in April, awarding Heidi \$2,948 plus a \$100 sanction. 7/1/09 RP 70. The court also ordered Mark to pay Heidi \$1,000 for attorney fees. *Id.* at 72. This oral ruling was not reduced to writing.

Two months later, the court issued a letter changing its formula to account for Heidi's new income. CP 118. Under this revised formula, the parties were to calculate maintenance by adding their net incomes, subtracting child support, and dividing the remainder in half. *Id.* Heidi was still to receive one-half of all Mark's commissions. CP 119. The court also changed its prior

ruling to allow Mark to deduct the maintenance from his income. *Id.* Although the maintenance term originally ended in June 2012, the court apparently extended the maintenance term by six months, ruling that the modification is “valid through 2012.” *Id.* Again, no written order followed this letter ruling.

The parties returned to court in March 2010, apparently to enter a written order consistent with the court’s oral and letter rulings. 3/17/10 RP 4-6. But the parties were both plainly struggling with the court’s formula. *Id.* at 4-12.

The court ruled that Mark would continue to calculate his net income by subtracting 15% from his gross, although his actual tax bracket was about 23%. 3/17/10 RP 12, 31. The court also ruled that Mark’s base would continue to be imputed to \$90,000, although his actual base was \$82,500. *Id.* at 21, 31. The court reduced Heidi’s imputed income to \$2,200 per month, based on her unsupported assertion that since Mark earns less, her income must also be less. *Id.* at 31.

The parties were to treat any income Mark received above \$90,000 as a commission. 3/17/10 RP 30-32. Whenever Mark received a commission at month’s end, he would withhold taxes on the total, and then pay Heidi one-half of the gross commission. *Id.*

at 37-38. Heidi would also pay taxes on the amount she received as maintenance. *Id.* at 38.

The tax rate on Mark's commissions is about 30%, so if Mark received a \$10,000 commission one month, \$3,000 was automatically withheld, and he would pay Heidi \$5,000, leaving only \$2,000 left for Mark. *Id.* at 36. But the court reasoned that at year's end, Mark could write off the 50% he paid Heidi as "not income," increasing his tax refund, thus offsetting his monthly tax withholding on the whole amount (*id.* at 37-38):

If the tax is taken out of it, which you've paid, and then you give her half of the total -- i.e., before the tax is taken out of it -- and then she has to claim the tax for whatever interest that she pays, but you get 100 percent write-off for whatever you give her, you thus have a higher tax that you're -- well, that you're getting back, though, because you're paying her and you can deduct it from your yearly amount, which then, because of the higher tax, you're going to get a better -- you're going to get a bigger refund. Now, that's generally the way it will work. So you will get the benefit of the higher tax that you pay because you're writing off 50 percent of the commission as not income. So as you report that you paid it, yes, you don't get that portion back until you file your taxes, but you'll get that portion back. And so it makes it seem fair that it would be 50 percent of the gross and that Mrs. would have to pay taxes and Mr. gets to write it off as maintenance.

Mark proposed a "cap" so that the court's formula could not result in him owing more maintenance than under the decree. *Id.* at

41. But the court refused, ruling that “[t]here’s not going to be any cap on anything right now.” *Id.* at 41-42.

Heidi asked the court to extend the maintenance term six months to December 2012. *Id.* at 46. The court extended the maintenance term three months without discussion, reasoning that it “split the baby.” 3/17/10 RP 47.

**C. But the court’s maintenance formula ultimately increased Mark’s maintenance obligation.**

The parties returned to present orders on June 8, 2011, more than two years after Mark moved to modify maintenance. 6/8/11 RP 4, 6-8. Mark’s gross income in 2009 was \$119,502, \$80,000 less than the \$200,000 imputed income upon which maintenance was originally based. CP 3, 216; 8/9/11 RP 31. Mark’s income remained well below the \$200,000 imputed amount for the first 11 months of 2010, but a significant commission in December brought his annual gross to \$230,738. CP 207, 216; 8/9/11 RP 30-31. Even so, he averaged \$175,120 gross in 2009 and 2010, \$25,000 per year less than \$200,000 – the amount used to calculate maintenance in the decree. CP 216.

Mark argued that even though the court had correctly found adequate cause to reduce Mark’s maintenance obligation, the

court's formula increased maintenance. 6/8/11 RP 24-25. As the chart below illustrates, for the 2009-2010 maintenance year, Mark wound up owing Heidi \$8,250.50 more than under the original decree. And for the last half of 2010, Mark owed Heidi \$21,252 more than under the original order. Thus, although his income averaged \$25,000 less per year, he owed Heidi \$29,502 more.

Date	Decree	Base New	Commission New	Total New
May '09	\$4,725	\$2,313	\$1,541.75	\$3,854.75
June '09	\$4,725	\$2,313	\$1,541.75	\$3,854.75
July '09	\$4,900	\$1,800	\$1,541.75	\$3,341.75
Aug. '09	\$4,900	\$1,800	\$1,541.75	\$3,341.75
Sept. '09	\$4,900	\$1,800	\$1,541.75	\$3,341.75
Oct. '09	\$4,900	\$1,734	\$1,541.75	\$3,275.75
Nov. '09	\$4,900	\$1,734	\$1,541.75	\$3,275.75
Dec. '09	\$4,900	\$1,734	\$1,541.75	\$3,275.75
Jan. '10	\$4,900	\$1,734	\$6,176	\$7,910
Feb. '10	\$4,900	\$1,734	\$6,176	\$7,910
Mar. '10	\$4,900	\$1,734	\$6,176	\$7,910
April '10	\$4,900	\$1,734	\$6,176	\$7,910
May '10	\$4,900	\$1,734	\$6,176	\$7,910
June '10	\$4,900	\$1,472	\$6,176	\$7,648
July '10	\$4,300	\$1,666	\$6,176	\$7,842
Aug. '10	\$4,300	\$1,666	\$6,176	\$7,842
Sept. '10	\$4,300	\$1,666	\$6,176	\$7,842
Oct. '10	\$4,300	\$1,666	\$6,176	\$7,842
Nov. '10	\$4,300	\$1,666	\$6,176	\$7,842
Dec. '10	\$4,300	\$1,666	\$6,176	\$7,842
Jan. '11	\$4,300	\$1,666	unknown	unknown
Feb. '11	\$4,300	\$1,666	unknown	unknown
Mar. '11	\$4,300	\$1,666	unknown	unknown
April '11	\$4,300	\$1,666	unknown	unknown
May '11	\$4,300	\$1,666	unknown	unknown
June '11	\$4,300	\$1,666	unknown	unknown

July '11	\$3,200	\$1,666	unknown	unknown
Aug. '11	\$3,200	\$1,666	unknown	unknown
Sept. '11	\$3,200	\$1,666	unknown	unknown
Oct. '11	\$3,200	\$1,666	unknown	unknown
Nov. '11	\$3,200	\$1,666	unknown	unknown
Dec. '11	\$3,200	\$1,666	unknown	unknown
Jan. '12	\$3,200	\$1,666	unknown	unknown
Feb. '12	\$3,200	\$1,666	unknown	unknown
Mar. '12	\$3,200	\$1,666	unknown	unknown
April '12	\$3,200	\$1,666	unknown	unknown
May '12	\$3,200	\$1,666	unknown	unknown
June '12	\$3,200	\$1,666	unknown	unknown
July '12	\$0	\$1,666	unknown	unknown
Aug. '12	\$0	\$1,666	unknown	unknown
Sept. '12	\$0	\$1,666	unknown	unknown

Mark asked the court to go back to the maintenance award in the original decree, pointing at that he would pay less than he owed under the modification:

Mr. Stohr would be very, very happy to go back to the old order. He would owe less money under the old order and we could avoid all of this.

6/8/11 RP 24-25. The court did not consider this request other than to point out that Mark moved to modify. *Id.* at 25.

Since the court's oral ruling, Mark had been unable to keep up with the increased maintenance payments. *Id.* at 10-11, 14. Mark had to pay Heidi 50% of his *gross* commissions each month, even though taxes on his full income were automatically withheld each month. *Id.* at 14. Although the court's premise was that this would balance out when Mark got a tax refund, Mark did not have

enough to pay each month. *Id.* Mark calculated that he was behind \$57,000. *Id.* at 10, 12.

Mark argued that he should not have to pay 12% judgment interest on the past-due maintenance, explaining that he had paid all he could in good faith, that he could not calculate the full amount that he owed Heidi, and that he was unable to give Heidi more until he received his 2011 tax refund. *Id.* at 11, 14. The court ruled that his payment to Heidi became due and began accruing interest at 12% when he received the commissions. *Id.* at 16-17, 66.

Mark argued that he never moved the court to modify his child support obligation. *Id.* at 17. The court agreed, but stated that it modified child support *sua sponte*. *Id.* at 17-18.

Mark asked the trial court to follow its letter ruling, which allowed Mark to deduct the maintenance payments from his base income before paying taxes. *Id.* at 18, 23-24. But the court went back to his prior oral ruling that maintenance paid from Mark's base income is not deductible. *Id.* at 31-32, 34, 36. The court acknowledged that this contradicted his ordinary practice and that he could not remember why he made the maintenance nontaxable. *Id.* at 34-36.

**D. Nearly two years after the first modification hearing, the court entered a modification order, finding that Mark had proven a substantial change in circumstances, but increasing his maintenance obligation.**

In June, 2011, the court entered an order modifying Mark's maintenance obligation. CP 144-53. The court found adequate cause; *i.e.*, that Mark's dramatically reduced income was a substantial change in circumstances. CP 145. The order leaves it to the parties to determine maintenance each month:<sup>2</sup>

- ◆ Every pay period, Mark must give Heidi a copy of his pay stub. CP 145-46.
- ◆ Mark's monthly base income is \$7,500, \$90,000 per year.<sup>3</sup> CP 146. Before June 2010, the parties must calculate maintenance based on Mark's imputed net base income of \$6,375. CP 146. Beginning June 2010 (when Mark moved to Oregon and began paying State income taxes) the parties must use Mark's imputed net base income of \$5,700. CP 146.
- ◆ Heidi's imputed net income is \$1,672. CP 146.
- ◆ The parties must add their imputed net incomes together. CP 146.
  - Mark must pay Heidi child support based on his *pro rata* share of their imputed net base income. CP 146.
  - Mark must pay Heidi nontaxable maintenance in an amount resulting in each party receiving one-half of the net imputed adjusted base monthly income. CP 145-46.

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<sup>2</sup> The court provided sample worksheets, calculating maintenance back to May 2009, when Mark moved to modify. CP 149-53.

<sup>3</sup> Mark's annual base income is \$82,500, not \$90,000. 3/17/10 RP 21.

- ◆ The parties must divide 50/50 all of Mark's commissions. CP 147.<sup>4</sup> Mark must pay Heidi immediately upon receiving the commission. *Id.* Heidi must include the maintenance from commissions as income, and Mark may deduct it from his income. *Id.* But Mark is to pay all taxes on all commission up front, taking the deduction at year's end. *Id.*

The trial court ordered that the modification would become effective on May 1, 2009, and that maintenance would run through September 2012, three months longer than the original maintenance term. CP 145. The court ordered Mark to compensate Heidi for any tax burden caused by a lump-sum payment for arrearages. CP 148. The court entered the order, *nunc pro tunc* to June 2009. 6/8/11 RP 70-71; CP 148.<sup>5</sup>

**E. The trial court denied Mark's motion for reconsideration, stating that Mark got what he asked for.**

Mark moved for reconsideration, arguing, among other things, that the court had erroneously increased his maintenance obligation, despite having found that his decreased income justified a modification. CP 206-08. As an example, Mark explained that, in

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<sup>4</sup> Throughout this matter, there was confusion about whether commissions meant all actual commissions, or anything above \$90,000 – Mark's base income plus \$7,500 to account for some commissions. 7/1/09 RP 36, 44, 58. Heidi ultimately clarified that the parties would divide 50/50 everything indicated as a "Commission" on Mark's paycheck which would include all amounts over \$82,500. 3/17/10 RP 43.

<sup>5</sup> The court also awarded Heidi a \$2,948 judgment, plus interest, for unpaid support from April 2009. CP 144. The parties subsequently entered a satisfaction of judgment. CP 202.

the first four months of 2011 he owed Heidi \$91,000 under the modification order. CP 207. Under the original decree, he would have owed Heidi \$17,200 in maintenance for the first four months of 2011, and \$45,000 for the entire year. CP 12. Thus, Mark asked the court to order that his modified maintenance obligation could not exceed the original maintenance obligation. CP 207.

The court denied Mark's request to cap the modified maintenance obligation, reasoning that: (1) Mark benefitted from the calculation reducing his "imputed base income" to \$90,000<sup>6</sup>; (2) the court's formula was intended to "accommodate the fluctuations in [Mark's] income"; and (3) the court had no "sympathy" for Mark, who got what he wanted. 8/9/11 RP 35; CP 251.

The court asked why it extended the maintenance term to September 2012, hypothesizing that it extended the term because it had "reduc[ed]" Mark's maintenance obligation. 8/9/11 RP 21-23. Mark again noted that he ended up paying more maintenance, but the court did not respond, granting Heidi's request to "research" the issue. 8/9/11 RP 23-24.

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<sup>6</sup> As discussed below, the original award did not differentiate between base income and commission, imputing both at \$200,000 for calculating maintenance. CP 3.

Finally, the court ordered Mark to pay 50% of any additional tax burden he caused to Heidi by his failure to pay maintenance. CP 252. Mark timely appealed. CP 255-56.

## **ARGUMENT**

### **A. Standard of review.**

A trial court may modify maintenance when the moving party shows a substantial change in circumstances the parties did not anticipate when they divorced. RCW 26.09.170(1); *In re Marriage of Spreen*, 107 Wn. App. 341, 346, 28 P.3d 769 (2001). A “change in circumstances” refers to the “financial ability of the obligor spouse to pay vis-a-vis the necessities of the other spouse.” *Spreen*, 107 Wn. App. at 346 (quoting *In re Marriage of Ochsner*, 47 Wn. App. 520, 524, 736 P.2d 292 (1987)). If the moving party makes this threshold showing, then the court modifies maintenance under the following factors set forth in RCW 26.09.090:

- ◆ The financial status of the party seeking maintenance;
- ◆ The time necessary to acquire necessary skills and education;
- ◆ The age and emotional condition of the party seeking maintenance; and
- ◆ The ability of the spouse from whom maintenance is sought to meet his needs and financial obligations while meeting those of the spouse seeking maintenance.

**Spreen**, 107 Wn. App. at 347-48 & n.4. The most important consideration is the parties' post-dissolution economic positions. 107 Wn. App. at 348 (citing **DeRuwe v. DeRuwe**, 72 Wn.2d 404, 408, 433 P.2d 209 (1967)).

This Court reviews a modification order for substantial supporting evidence and for legal error. **Spreen**, 107 Wn. App. at 346. If this Court affirms the threshold determination that there was a substantial change in circumstances, it will nonetheless reverse the maintenance modification if the trial court abused its discretion in determining the new maintenance award. *Id.* at 347.

**B. The trial court erroneously increased Mark's maintenance obligation after correctly finding that Mark's dramatically reduced income was a substantial change in circumstances.**

It is axiomatic that when the only changed circumstance is the moving party's dramatically decreased income, the trial court abuses its discretion in increasing the maintenance obligation. Such an increase must be "outside the range of acceptable choices." **In re Marriage of Horner**, 151 Wn.2d 884, 893-94, 93 P.3d 124 (2004). This Court should reverse.

It is black-letter law that a court's legal conclusions must be supported by factual findings that are in turn supported by

substantial evidence. *In re Marriage of Fahey*, 164 Wn. App. 42, 55-56, 262 P.3d 128 (2011), *rev. denied*, 173 Wn.2d 1019 (2012). So too must a maintenance modification be supported by the substantial change in circumstances providing adequate cause for the modification. See *e.g.*, *In re Marriage of Drlik*, 121 Wn. App. 269, 279, 87 P.3d 1192 (2004); *Spreen*, 107 Wn. App. at 348-49.

In *Spreen*, for example, this Court held that the trial court correctly found that a maintenance modification was warranted, where the decree anticipated that the wife would become employable, but her worsening depression and bi-polar disorder prevented her from working. *Spreen*, 107 Wn. App. at 346. But this Court reversed the modified maintenance award, holding that the trial court had “arbitrarily limit[ed] maintenance to one additional year,” where the evidence was that the wife would be unable to work for at least 18 months to two years. 107 Wn. App. at 347, 349. In other words, the modification was inconsistent with the substantial changes supporting modification in the first instance. *Id.*

Here, the only changed circumstance alleged was Mark’s dramatically reduced income. Mark provided uncontested evidence that his income dropped by more than 50% shortly after the parties’ dissolution. CP 56-69, 93-95. Mark was working as much and as

hard as ever, in the same industry, for the same employer. CP 56-69. Through no fault of his own, his income plummeted. *Id.* As the trial court put it, “whether we like it or whether we don’t, the economy at the present time is suffering.” 7/1/09 RP 33.

Although Heidi opposed a modification, she could not and did not refute Mark’s decreased income. CP 71-80, 103-08, 109-17. Nor did she seek affirmative relief. *Id.*

The trial court correctly found that Mark’s decreased income was adequate cause for a maintenance modification. 7/1/09 RP 33, 43; CP 145; ***Ochsner***, 47 Wn. App. at 524-25 (the trial court properly concluded that an unplanned income reduction constituted a substantial change in circumstances). Mark’s financial circumstances had plainly changed substantially in 2009, where his annual income had decreased by 40%. CP 56-57. His net monthly income was \$5,538 – less than his combined maintenance and child-support obligations. *Compare* CP 12 *with* CP 57, 68.

The court initially set out to find a way to reduce Mark’s maintenance obligation. 7/1/09 RP 33-34, 36-37, 43. As discussed above, however, the court ordered the parties to follow a formula for calculating maintenance that would ultimately increase Mark’s maintenance award substantially. *Supra*, Statement of the Case §

C. By the time the court entered final orders – two years after Mark moved to modify – it had become obvious that the court’s formula would backfire. 6/8/11 RP 24-25. But when confronted with the fact that its formula would actually increase Mark’s maintenance obligation, the court blamed Mark, stating that he had agreed to split an imputed \$90,000 base and all commissions, so got what he had asked for. 8/9/11 RP 35.

Mark plainly did not agree to increase his maintenance obligation. Two and one half years before, at the first hearing on modification, Mark, who was unrepresented, stated that he had offered Heidi 50% of his net income and commissions. 7/1/09 RP 45. But Mark made this offer as a way to reduce his maintenance obligation. 7/01/09 RP 33-34, 36-37, 43. And Mark raised this point in court while the court attempted to reduce Mark’s maintenance obligation. *Id.* In context, Mark was plainly offering a way to reduce his maintenance obligation. *Id.* Nothing Mark said could be construed as an agreement to increase maintenance. 8/9/11 RP 35.

Further, to decrease his maintenance obligation, Mark offered to split his *net* income. 7/1/09 RP 45. But the court ordered Mark to pay Heidi 50% of his gross commissions, apparently

thinking Mark would make it up at the end of the year when he takes a deduction. 3/17/10 RP 37-38. Just this aspect of the court's award is a massive windfall to Heidi, who would get \$5,000 out of a \$10,000 commission, while Mark would have only about \$2,000 left after taxes. *Supra*, Statement of the Case § C.

And counsel's argument that Mark wants to "have it both ways" simply does not bear out. 8/9/11 RP 34. It is beyond dispute that the modification order results in Mark paying significantly increased maintenance. *Supra*, Statement of the Case § C. Mark first asked the trial court to cap maintenance in March 2010, long before his income recovered. 3/17/10 RP 41. He was not asking the court to pass "the burden of the risk" onto Heidi, but simply to cap the maintenance award so that Heidi could not wind up with a windfall. *Compare* 8/9/11 RP 33-34 *with* 3/17/10 RP 41-42.

The full magnitude of the court's error was realized in early 2011, when under the modification formula, Mark owed Heidi \$91,000 in four months, when under the decree he would have owed her \$17,200. CP 12, 207. Looking at it another way, in just four months, Mark owed Heidi \$37,000 – 68% – more than he would have owed her for the entire year under the decree. CP 12,

207.<sup>7</sup> Although Mark brought this the court's attention on reconsideration, the court still insisted that Mark got what he wanted. 8/9/11 RP 31, 35. Again, what Mark wanted was a maintenance reduction – not an increase.

If the first quarter of 2011 was not bad enough, the last maintenance year has the potential to be a phenomenal windfall to Heidi. From July 2011 through June 2012, Mark was required under the decree to pay Heidi \$3,200 per month, totaling \$38,400. CP 12. Assuming that Mark earns \$200,000 per year during that timeframe (his imputed income under the decree) he would now owe Heidi 2.5 times more than he owed her under the decree – \$98,427.50.<sup>8</sup>

Nearly \$20,000 of this amount is just from the three months the court tacked onto the end of the original maintenance term. This is obvious error – although the court could not remember why it increased the maintenance term, it speculated that it had done so because it had decreased the monthly payment. CP 145; 3/17/10

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<sup>7</sup> This includes maintenance and child support. CP 12.

<sup>8</sup> \$19,992 (base, \$1,666 per month base x 12 months) + \$58,750 (commissions, \$200,000 - \$82,500 = \$117,500 / 2 = \$58,750) + \$19,685.50 (base and commissions for the three months the court added to the maintenance term).

RP 47; 8/9/11 RP 21-23. Of course, on average, the court never decreased Mark's payments, but increased them substantially.

In short, the maintenance increase plainly contradicts Mark's substantially changed circumstances – a dramatic income decrease. This Court should reverse.

**C. Many more errors compound the improper maintenance increase.**

In addition to erroneously increasing Mark's maintenance obligation, the court made many other errors during the modification. Collectively, these errors significantly compound the damage done by the maintenance increase. This Court should reverse.

The court imputed Mark's base income at \$90,000, knowing full well that Mark's base is \$82,500. 7/1/09 RP 36. The court apparently did so to account for some commission income. *Id.* But the court also ordered Mark to pay Heidi 50% of all commissions, which includes any income above \$82,500. CP 146-47; 3/17/10 RP 42-43. Double-counting this \$7,500 is obvious error.

The court also made three tax errors. The court ordered that maintenance from Mark's base would be calculated after taxes, but ordered Mark to use only a 15% federal income tax bracket to

calculate maintenance. 3/17/10 RP 12, 31; CP 146. Mark's tax bracket was 23%. 3/17/10 RP 12.

Under the decree, all maintenance was deductible to Mark and taxable to Heidi. CP 12; 7/1/09 RP 60. On the modification, the court ordered that Mark could not deduct any maintenance paid from his base. CP 145. The court acknowledged that this was not its normal practice and did not seem to know why it had ruled this way, but refused to change its ruling. 6/8/11 RP 31-33, 34, 36.

And the court ordered Mark to pay Heidi 50% of his gross commissions – even though Mark's employer automatically withheld 30% of his commissions each month. 3/17/10 RP 36; CP 145-47. Over Mark's objection, the court explained that Mark could claim the payments at year's end, possibly making up for his losses throughout the year. 3/17/10 RP 37-38. Mark should not have to carry the entire tax burden all year, risking that he might break even in the end.

The court also decreased Heidi's imputed gross monthly income by \$419 (from \$2,619 to \$2,200). CP 3, 146. This decrease is apparently based on counsel's unsupported speculation that Heidi works in the same industry as Mark, so must also be earning less. 07/1/09 RP 22-23. This correlation is

imaginary – Mark’s income decreased because his sales were down – Heidi is not in sales, she’s a technician. CP 56-57, Supp. CP at \_\_\_\_\_. And although Heidi was working at the time, she did not disclose her income and claimed that she was only “training.” Compare 7/1/09 RP 39 with Supp. CP \_\_\_\_\_.

The court also erroneously ruled that the modification would take effect when Mark first moved to modify (as opposed to when the court entered the written orders), adding 12% interest on arrearages dating back to May 2009.<sup>9</sup> CP 147-48. Mark argued that he should not have to pay 12% interest, where he paid Heidi as much as he could in good faith, but could not keep up, particularly as he had to pay her on gross commissions, paying all of the tax and paying Heidi. 6/8/11 RP 10-11, 13-16. This lengthy discussion on interest made it quite clear that the court had increased maintenance. Thus, this is error for the same reason that the modification is error; *i.e.* the court was plainly increasing maintenance based on an income reduction.

Finally, the maintenance award no longer decreases over time to account for Heidi’s increasing self-sufficiency. Compare CP

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<sup>9</sup> Mark was current on the maintenance awarded under the decree. 6/8/11 RP 10. Although he had paid more than he owed under the decree, he had not been able to comply with the courts oral ruling; *i.e.*, he could not calculate it or afford it. *Id.* at 10-11.

12 and 22 with CP 145-46. Under the decree, Mark's maintenance obligation reduced over the four-year term. CP 12, 22.<sup>10</sup> Now Mark has to pay the same percentage of his income every month. CP 145-47.

In short, these errors compound the court's erroneous maintenance increase. This Court should reverse.

**D. The increased maintenance award is an error for the additional reason that Heidi did not move to modify maintenance or prove a substantial change in circumstances.**

The law plainly requires a party moving to modify maintenance to show a substantial change in circumstances. RCW 26.09.170(1); *Marriage of Spreen*, 107 Wn. App. at 346. Heidi did not cross-move in response to Mark's modification motion, never attempting to establish adequate cause supporting a modification in her favor. Having failed to allege – must less prove – substantially changed circumstances of her own, Heidi was not entitled to increased maintenance. This Court should reverse.

The maintenance increase to Heidi was significant when the trial court entered final orders, and has the potential to result in a

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<sup>10</sup> Although the maintenance component actually increased \$200 per month in year two, this was apparently to offset a decrease in child support. CP 12. The combine maintenance and support obligation was the same in years one and two, but decreased markedly in years three and four. *Id.*

massive windfall. For 2009 and 2010, Heidi would receive almost \$30,000 more under the modification formula, even though Mark's average annual income is \$25,000 less. *Supra*, Statement of the Case § C. In the first quarter of 2011, Heidi already had another \$30,000 windfall. CP 207; *supra*, Statement of the Case § E. And even if Mark did not earn any more commissions in 2011, Heidi would get another \$13,328 as her guaranteed percentage of Mark's base. CP 153, 207. Thus, for the second half of 2009 through 2011, Heidi would get a \$73,000 maintenance increase, having never alleged nor proved that her circumstances changed.

And this does not take into account 2012. Although it is impossible to predict what Mark will earn, if he makes the amount imputed under the decree, Heidi will have a \$40,000 windfall – \$20,000 more for January through June, included in the original decree, and \$20,000 for July through September, which the court tacked on as part of the modification.<sup>11</sup> Thus, Heidi's total windfall will be at least \$113,000, and possibly much more. At the very

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<sup>11</sup>  $\$9,996$  (base,  $\$1,666$  per month base x 6 months) +  $\$29,375$  (commissions,  $\$200,000 - \$82,500 = \$117,500 / 2 = \$58,750 / 12$  months =  $\$4,895.83$  x 6 months =  $\$29,375$ ) =  $\$39,371$  total to Heidi in Jan. through June 2012 –  $\$19,200$  ( $\$3,200$ /month under decree x 6 months =  $\$19,200$ ) =  $\$20,171$ .

least, Heidi's increased maintenance will be 50% of the total maintenance awarded under the decree. CP 12.

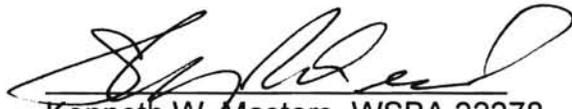
Again, Heidi did not allege or prove changed circumstance, so is not entitled to increased maintenance.

### CONCLUSION

This Court should reverse the order modifying Mark's maintenance obligations. The trial court correctly found that Mark's dramatically reduced income was adequate cause for a maintenance modification. But the court increased Mark's maintenance, and made a number of other erroneous changes that financially damaged Mark. This was an abuse of discretion.

RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of April, 2012.

MASTERS LAW GROUP, P.L.L.C.



Kenneth W. Masters, WSBA 22278  
Shelby R. Frost Lemmel, WSBA 33099  
241 Madison Avenue North  
Bainbridge Is, WA 98110  
(206) 780-5033

**CERTIFICATE OF SERVICE BY MAIL**

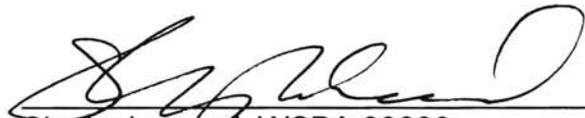
I certify that I caused to be mailed, a copy of the foregoing **BRIEF OF APPELLANT** postage prepaid, via U.S. mail on the 9<sup>th</sup> day of April, 2012, to the following counsel of record at the following addresses:

Co-counsel for Appellant

Charles Gazzola  
Gazzola & Hull, P.C.  
720 S.W. Washington Street,  
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Shelby Lemmel, WSBA 33099

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JUN 17 2011

Scott G. Weber, Clerk, Clark Co.

Superior Court of Washington County of Clark

In re: the Matter of:

MARK WILLIAM STOHR,

Petitioner,

and

HEIDI RIE STOHR,

Respondent.

No. 06-3 00081 4

Order Re: Modification of Maintenance  
and Child Support

Judgment Summary:

- A. Judgment Creditor: Heidi R. Stohr
- B. Judgment Debtor: Mark W. Stohr
- C. Principle Judgment amount: \$2,948 (April 2009 support owed)
- D. Interest due to date of Judgment: 12% from April 1, 2009 until paid
- E. Attorney Fees: \$1,000.00
- F. Costs:
- G. Other recovery amount: \$100.00 civil penalty - contempt
- H. Principle Judgment shall bear interest at 12% per annum:
- I. Attorney fees, costs and other recovery amounts shall bear interest at 12% per annum:
- J. Attorney for Judgment Creditor: Michael Roe
- K. Attorney for Judgment Debtor: Patricia Arjun

Any Judgment not reflected above in the Judgment Summary are specifically reserved for calculation and preserved for collection of back child support, nonpayment of nontaxable spousal support and taxable spousal maintenance (50% split of gross commissions) together with interest at 12% per annum on any arrearage.

Order

This matter having come before the Honorable Edwin Poyfair for hearing on May 22,  
ORDER RE:MODIFICATION OF MAINTENANCE) - Page 1 of 6

Weber Gunn, PLLC  
7700 N.E. 26<sup>th</sup> Avenue  
Vancouver, WA 98665  
Phone: (360) 574-1600  
Fax: (360) 574-3688

1 2009, June 5, 2009, June 19, 2009, July 1, 2009, and March 17, 2010 pursuant to Petitioner's  
2 Motion for Adequate Cause Re: Maintenance and the Respondent's Order to Show Cause Re:  
3 Contempt and the court's determination that child support should also be modified, the court  
4 having considered the records and files herein and the argument of counsel, and finding that  
5 Petitioner has established adequate cause to proceed on his Petition to Modify Spousal  
6 Maintenance and that the Order of Child Support should be modified consistent with this order,  
7 It is hereby ORDERED that where inconsistent herewith, the Decree of Dissolution of Marriage  
and Order of Child Support dated December 31, 2008 are hereby amended as follows:

8 1. The court modifies Spousal Support/Maintenance and Child Support obligations of  
9 Petitioner as follows:

10 A. This modification of incomes used for purposes of calculating child  
11 support and taxable and nontaxable spousal maintenance/support is effective  
12 commencing May 1, 2009 onward. Nontaxable spousal support and taxable spousal  
13 maintenance is modified as hereinafter provided effective commencing May 1, 2009  
14 through September 30, 2012. Taxable spousal maintenance from Petitioner's  
15 commissions is modified as hereinafter provided commencing May 1, 2009 through  
16 September 30, 2012.

17 B. Each parent shall pay one-half of their daughter's private school tuition.

18 C. The Petitioner's request to be relieved of paying his 50% share of the  
19 property tax on the family home is denied. As ordered in the Decree of Dissolution of  
20 Marriage entered on December 31, 2008, both parties shall each timely pay one-half of  
21 the property tax and house insurance on the family home as each owns half interest in  
22 the real property. The Respondent shall pay the home owners association fees as long  
23 as she resides on the property.

24 D. Petitioner shall pay monthly nontaxable spousal support to the  
Respondent as specified below. Respondent shall not claim this as income, and  
Petitioner shall not claim this as a deduction for any purpose. This provision is  
specifically enforceable by the court's power of Contempt. Petitioner shall pay  
nontaxable spousal support to Respondent based on the parties' imputed net base  
incomes calculated as follows:

1. Every pay period commencing with the May 1, 2009 payment, Petitioner  
shall, immediately upon receipt, provide Respondent with a copy of all pay period

ORDER RE: MODIFICATION OF MAINTENANCE) - Page 2 of 5

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1 and earnings statement(s) indicating base salary and any commissions. These  
2 shall be sent via fax or hand-delivered by Petitioner to Respondent within five (5)  
3 days of receipt.

4 ii. Commencing May 1, 2009 Petitioner's base salary is imputed/established  
5 at \$90,000 annual gross / \$7,500 monthly gross income. After deducting 15%  
6 (for FICA and federal taxes only), the monthly imputed net base for Petitioner is  
7 set/established at \$6,375. Beginning June 1, 2010 forward, Petitioner will deduct  
8 9% (for Oregon State tax) resulting in a monthly imputed net base income for  
9 Petitioner of \$5,700.

10 iii. Commencing May 1, 2009 through June 30, 2009 no income shall be  
11 imputed to Respondent as per the original decree entered on December 31,  
12 2008. Commencing July 1, 2009 forward, Respondent will have gross wages  
13 imputed at \$2,200/month. After deducting 15% (for FICA and federal taxes) and  
14 9% (for Oregon State tax), the monthly imputed net base for Respondent is  
15 set/established at \$1,672.

16 iv. These imputed net base incomes shall be added together. Each party's  
17 pro-rata child support obligation according to the Washington State Child Support  
18 Schedule and Worksheets shall be deducted from his or her imputed net base  
19 income to determine the adjusted net base income of each party. The charts  
20 attached as Exhibits 1 through 4(a), attached hereto and incorporated herein by  
21 this reference correctly specify the method for calculation of the above and  
22 establish the amounts due from Petitioner and payable to Respondent.

23 v. Pursuant to Exhibits 1 through 4(a), the adjusted net base incomes of the  
24 parties as set forth in Exhibits 1 through 4(a) shall be added together then  
25 divided by two (2) to determine the amount that will be used to calculate the  
26 amount of Petitioner's payments to Respondent so that each party receives one-  
27 half of the net imputed adjusted base monthly income. Petitioner shall pay the  
28 Respondent this amount by the first of each month commencing May 1, 2009  
29 and each month thereafter and this amount shall be nontaxable to Respondent  
30 and not tax deductible by Petitioner.

31 vi. Petitioner's payment to Respondent of the nontaxable spousal support  
32 shall not be deducted by Petitioner nor claimed by Petitioner as a deduction for  
33 tax purposes or included in Respondent's income for any purpose. It is  
34 necessary to have this income nontaxable to the Respondent in order to keep the  
35 incomes "equalized" as taxes have already been deducted in using net vs. gross  
36 imputed base incomes as ordered by the court.

37 vii. Petitioner shall provide to Respondent a copy of his annual income tax  
38 Return when completed with all schedules and attachments and W-2 and 1099  
39 statements and year ending wage stubs within five (5) days of receipt from his  
40 employer and in no case later than February 15 of each year (for the preceding  
41 year by 2-15-11 for 2010 tax year) through 2014 in order to provide information

ORDER RE: MODIFICATION OF MAINTENANCE) - Page 3 of 6

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1 regarding commissions.

2  
3 E. Commissions: All gross commissions received by Petitioner commencing May 1,  
4 2009 and per pay period thereafter through September 30, 2012 to include Petitioner's  
5 commissions paid through September 30, 2012 shall be equally divided between the parties.  
6 Petitioner shall pay Respondent 50% of his gross commissions as a separate payment by check  
7 immediately upon his receipt as automatic deposit to his bank account each pay period. This  
8 shall be considered as taxable spousal maintenance payments and included as income to  
9 Respondent and deductible to Petitioner for tax purposes.

10 F. Child Support: Both parties' monthly imputed net base incomes will be used to  
11 determine basic total child support as required by the State of Washington Child Support  
12 Schedule then in effect. Commencing October 1, 2009, the new State of Washington Child  
13 Support Schedule (maximum of \$2,880 for two children over age 12 and \$1,844 for one child  
14 over age 12) shall be used to determine the parties' child support transfer payment and shall be  
15 used to calculate the parties' pro-rata obligation of child support. Petitioner shall pay  
16 Respondent his pro-rata share of child support by the first of each month as determined by their  
17 imputed net base incomes as to percentages of income as previously provided, and the court  
18 shall enter an amended Order of Child Support consistent with this determination pursuant to  
19 Exhibits 1 through 5 attached hereto and incorporated herein.

20 G. Petitioner is in contempt of court for his willful and knowing failure to pay  
21 spousal maintenance/support and child support for April, 2009.

22 H. Petitioner owed arrearages in support for the month of April, 2009 in the amount  
23 of \$2,948. Respondent is awarded a judgment against Petitioner for this amount. Interest shall  
24 accrue at 12% per annum.

I. Petitioner shall pay Respondent the amount of \$1,000 as and for her reasonable  
attorney fees and costs. Respondent is awarded a judgment against Petitioner for this amount.  
Interest on the judgment shall accrue at the rate of 12% per annum from July 1, 2009 until paid.

J. The Petitioner is assessed a civil penalty of \$100.00 payable to Respondent.  
Respondent is awarded a judgment against Petitioner for this amount. Interest shall accrue at  
12% per annum from July 1, 2009 until paid.

K. Any amounts owed by Petitioner to Respondent for back child support and/or  
nontaxable spousal support and taxable spousal maintenance from May 1, 2009 to date  
together with interest thereon at 12% per annum are not extinguished by this order and are

ORDER RE: MODIFICATION OF MAINTENANCE) - Page 4 of 6

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1 specifically preserved for collection. Petitioner shall be obligated to pay for any additional tax  
2 burden on Respondent due to lump sum payment of arrearages, which puts Respondent in  
3 higher tax bracket in year of payment.

4 L. Except as otherwise specifically modified above, the provisions of the previous  
5 order of spousal support/maintenance and child support shall remain in full force and effect. A  
6 new child support order and Washington State Child Support Worksheets shall be entered to  
7 reflect the changes specified by this order.

8 M. Petitioner shall immediately provide his complete income information with tax  
9 returns including all schedules, W2s, 1099s and paycheck statements commencing December  
10 1, 2009 to date to Respondent. The court reserves jurisdiction to enter a judgment for any  
11 amount unpaid and said sums are not extinguished by entry of this order said being specifically  
12 preserved for collection.

13 N. The court reserves jurisdiction to determine and enter a judgment against  
14 petitioner for unpaid commissions after the documents have been provided. Commissions due  
15 to the Respondent for 2009 to date have not yet been calculated.

16 O. Except as provided by this order and pursuant to the Order of Child Support and  
17 Washington State Child Support Schedule and Worksheets entered this date, the previous  
18 provisions of the court's orders remain in full force and effect.

19 The hearings and orders on this matter occurred on May 22, 2009, June 5, 2009, June  
20 19, 2009, July 1, 2009, September 25, 2009 (court's written order), March 17, 2010, June 8,  
21 2011 and the date of entry of this order.

22 Dated: 6/17/11  
23 *See ProTone to 6/5/09.*

24 *J. Edwin Poyfair*  
Judge Edwin L. Poyfair

Presented by:

Approved for entry:  
Notice of presentation waived:

25 MICHAEL V. ROE, WSBA#16934  
26 Of Attorneys for Respondent

27 PATRICIA ARJUN, WSBA#  
28 Of Attorneys for Petitioner

29 Heidi R. Stohr, Respondent

30 Mark W. Stohr, Petitioner

ORDER RE: MODIFICATION OF MAINTENANCE) - Page 5 of 5

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**Exhibit 1**

Illustration of Calculations of Court orders of July 1, March 17, 2010 for 2 children May 1 thru June 30, 2009

**CHILD SUPPORT CALCULATION**

6375	Father's imputed base net	100.00%
0	Mother's net income	0.00%
<u>6375</u>	Combined net base income	
1750	Total support for 2 children over 12 based on old Washington State Child Support Schedule	

**Father's share of child support**

1750	Total support for two children over 12
x1.0	Father's percentage of total support
<u>1750</u>	Father's child support payment to Mother

**Mother's share of child support**

1750	Total support for two children over 12
x0	Mother's percentage of total support
<u>0</u>	

**BASE INCOME FOR FAMILY SPOUSAL MAINTENANCE CALCULATION**

**FATHER**

6375	Net base income (7500 minus 15% tax)
<u>-1750</u>	Child Support
4625	Adj Net base Income

**MOTHER**

0	NO income
<u>0</u>	Child Support
0	Adj Net

4625 Jt Adj Net base income

2313 Half of Jt Adjusted Net base

2313 Nontaxable spousal maintenance equals: Half of Jt Adj net base minus Mother's adj net income (Nontaxable)

1750 Child support payable from Father to Mother

6375	Imputed Net Base	0
<u>-2313</u>	Nontaxable spousal maintenance to be paid by Husband to Wife	2313
4062		<u>2313</u>
<u>-1750</u>	child support	0
2312	Mark's base net after payment to wife	<u>2313</u>

The above calculations do not include half commissions/bonuses due

Exhibit 2

Illustration of Calculations of Court orders of July 1, March 17, 2010 for 2 children July 1, 09 thru Sept 30, 2009

6375

1672

CHILD SUPPORT CALCULATION

6375	Father's imputed base net income	79.20%
1672	Mother's imputed base income	20.80%
<u>8047</u>	Combined net base income	
1892	Total support for two children over 12 based on old Washington State Child Support Schedule	

Father's share of child support

1892 Total support for two children over 12

X.792 Father's percentage of total support

1498 Father's child support payment to Mother

Mother's share of child support

1892 Total support for two children over 12

X.208 Mother's percentage of total support

394

BASE INCOME FOR FAMILY SUPPORT CALCULATION

FATHER

6375	Net base income (7500 minus 15% tax)
<u>-1498</u>	Child Support
4877	Adj Net base

MOTHER

1672	Net income( 2200 minus tax)
<u>-394</u>	Child Support
1278	Adj Net base

6155 Jt Adj Net base

3078 Half of Jt Adjusted Net base

1800	Nontaxable spousal maintenance equals:	Half of Jt Adj net base minus Mother's Adj Net base( Nontaxable)
<u>1498</u>	Child support payable from Father to Mother	

6375 Imputed

-1800 Nontaxable spousal maintenance payment to be paid by Husbar

4575

-1498 child support

3077 Mark's base net after payment to Wife.

1672

1800

3472

-394

3078

The above Calculations do not include the half commissions/bonuses due .

Exhibit 3

Illustration of Calculations of Court orders of July 1, March 17, 2010 for 2 children Oct 1, 2009 thru May 31, 10

6375

1672

CHILD SUPPORT CALCULATION

6375	Father's imputed base net income	79.20%
1672	Mother's imputed base net income	20.80%
<u>8047</u>	Combined net base income	
2118	Total support for two children over 12 based on Washington State Child Support Schedule	

Father's share of child support

2118

X.792 Father's percentage of total support

1677 Father's child support payment to Mother

Mother's share of child support

2118 Total support for two children over 12

X.208 Mother's percentage of total support

441

BASE INCOME FOR FAMILY SUPPORT CALCULATION

FATHER

6375	Net base income (7500 minus 15% tax)
<u>-1677</u>	Child Support
4698	Adj Net base Income

MOTHER

1672	Net income( 2200 minus tax)
<u>-441</u>	Child Support
1231	Adj Net base

5929 Jt Adj Net base income

2965 Half of Jt Adjusted Net base income

1734 Nontaxable spousal maintenance equals: Half of Jt Adj net base Income minus Mother's Adj Net Income( Nontaxable)

1677 Child support

6375 Imputed net base

-1734 Non taxable spousal maintenance (NTSM) to be paid to w

4641

1677 child support

2964 Mark's base net after payment to wife

1672 Imputed net base

1734 NTSM

3406

-441

2965

The above Calculations do not include the half commissions/bonuses due .

Exhibit 4(A)

Illustration of Calculations of Court orders of July 1, March 17, 2010 for 2 children June 1, 2010 thru June 30, 2010

5700 1672

CHILD SUPPORT CALCULATION

5700	Father's imputed base net income	77.30%
1672	Mother's imputed base net income	22.70%
<u>7372</u>	Combined net base income	
1986	Total support for two children over 12 based on Washington State Child Support Schedule	

Father's share of child support

1986	
<u>X.773</u>	Father's percentage of total support
1535	Father's child support payment to Mother

Mother's share of child support

1986	Total support for two children over 12
<u>X.227</u>	Mother's percentage of total support
451	

BASE INCOME FOR FAMILY SUPPORT CALCULATION

FATHER

5700	Net base income (7500 minus 15% tax)
<u>-1535</u>	Child Support
4165	Adj Net base income

MOTHER

1672	Net income (2200 minus tax)
<u>-451</u>	Child Support
1221	Adj Net base

5386 Jt Adj Net base income

2693 Half of Jt Adjusted Net base income

1472	Nontaxable spousal maintenance equals;	Half of Jt Adj net base income minus Mother's Adj Net Income (Nontaxable)
<u>1535</u>	Child support	

5700	imputed net base
<u>-1472</u>	Non taxable spousal maintenance (NTSM) to be paid
4228	
<u>-1535</u>	child support
2693	Mark's base net after payment to wife

1672	imputed net base
<u>1472</u>	NTSM
3144	
<u>-451</u>	
3144	

The above Calculations do not include the half commissions/bonuses due .

**Exhibit 4**

Illustration of Calculations of Court orders of July 1, March 17, 2010 for 1 child July 1, 10 thru Sept 30, 12

CHILD SUPPORT CALCULATION		5700	1672	1276
5700	Father's imputed base net income	77.30%		
1672	Mother's net income	22.70%		
<u>7372</u>	Combined net base income			
1276	Total support for 1 child over 12 based on Washington State Child Support Schedule			

Father's share of child support

1276	Total support for one child over 12
<u>X.773</u>	Father's percentage of total support
986	

Mother's share of child support

1276	Total support for one child over 12
<u>X.227</u>	Mother's percentage of total support
290	

BASE INCOME FOR FAMILY SUPPORT CALCULATION

FATHER

5700	Net base income (7500 minus 15% fed +9% OR tax)
<u>-986</u>	Child Support
4714	Adj Net base Income

MOTHER

1672	Net income( 2200 minus tax)
<u>-290</u>	Child Support
1382	Adj Net Income

6096 Jt Adj Net base income  
3048 Half of Jt Adjusted Net base income

<u>1666</u>	Family Support =	Mark's Adj Net base income minus Half of Jt Adj net base income( Nontaxable)
<u>986</u>	Child support	

5700	Imputed Net Base
<u>-1666</u>	
4034	
<u>-986</u>	
3048	Mark's base net income after paying support

1672	Imputed Net
<u>1666</u>	
3338	
<u>-290</u>	
3048	

The above calculations do not include half commissions/bonuses due

## **RCW 26.09.170**

### **Modification of decree for maintenance or support, property disposition — Termination of maintenance obligation and child support — Grounds.**

(1) Except as otherwise provided in RCW 26.09.070(7), the provisions of any decree respecting maintenance or support may be modified: (a) Only as to installments accruing subsequent to the petition for modification or motion for adjustment except motions to compel court-ordered adjustments, which shall be effective as of the first date specified in the decree for implementing the adjustment; and, (b) except as otherwise provided in this section, only upon a showing of a substantial change of circumstances. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(2) Unless otherwise agreed in writing or expressly provided in the decree the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance or registration of a new domestic partnership of the party receiving maintenance.

(3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child or by the death of the parent obligated to support the child.

(4) Unless expressly provided by an order of the superior court or a court of comparable jurisdiction, provisions for the support of a child are terminated upon the marriage or registration of a domestic partnership to each other of parties to a paternity order, or upon the remarriage or registration of a domestic partnership to each other of parties to a decree of dissolution. The remaining provisions of the order, including provisions establishing paternity, remain in effect.

(5)(a) A party to an order of child support may petition for a modification based upon a showing of substantially changed circumstances at any time.

(b) An obligor's voluntary unemployment or voluntary underemployment, by itself, is not a substantial change of circumstances.

(6) An order of child support may be modified one year or more after it has been entered without a showing of substantially changed circumstances:

(a) If the order in practice works a severe economic hardship on either party or the child;

(b) If a party requests an adjustment in an order for child support which was based on guidelines which determined the amount of support according to the child's age, and the child is no longer in the age category on which the current support amount was based;

(c) If a child is still in high school, upon a finding that there is a need to extend support beyond the eighteenth birthday to complete high school; or

(d) To add an automatic adjustment of support provision consistent with RCW 26.09.100.

(7)(a) If twenty-four months have passed from the date of the entry of the order or the last adjustment or modification, whichever is later, the order may be adjusted without a showing of substantially changed circumstances based upon:

(i) Changes in the income of the parents; or

(ii) Changes in the economic table or standards in chapter 26.19 RCW.

(b) Either party may initiate the adjustment by filing a motion and child support worksheets.

(c) If the court adjusts or modifies a child support obligation pursuant to this subsection by more than thirty percent and the change would cause significant hardship, the court may implement the change in two equal increments, one at the time of the entry of the order and the second six months from the entry of the order. Twenty-four months must pass following the second change before a motion for another adjustment under this subsection may be filed.

(8)(a) The department of social and health services may file an action to modify or adjust an order of child support if public assistance money is being paid to or for the benefit of the child and the child support order is at least twenty-five percent above or below the appropriate child support amount set forth in the standard calculation as defined in RCW 26.19.011 and reasons for the deviation are not set forth in the findings of fact or order.

(b) The department of social and health services may file an action to modify or adjust an order of child support in a nonassistance case if:

(i) The child support order is at least twenty-five percent above or below the appropriate child support amount set forth in the standard calculation as defined in RCW 26.19.011;

(ii) The department has determined the case meets the department's review criteria; and

(iii) A party to the order or another state or jurisdiction has requested a review.

(c) The determination of twenty-five percent or more shall be based on the current income of the parties and the department shall not be required to show a substantial change of circumstances if the reasons for the deviations were not set forth in the findings of fact or order.

(9) The department of social and health services may file an action to modify or adjust an order of child support under subsections (5) through (7) of this section if:

(a) Public assistance money is being paid to or for the benefit of the child;

(b) A party to the order in a nonassistance case has requested a review; or

(c) Another state or jurisdiction has requested a modification of the order.

(10) If testimony other than affidavit is required in any proceeding under this section, a court of this state shall permit a party or witness to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means, unless good cause is shown.

[2010 c 279 § 1; 2008 c 6 § 1017; 2002 c 199 § 1; 1997 c 58 § 910; 1992 c 229 § 2; 1991 sp.s. c 28 § 2; 1990 1st ex.s. c 2 § 2; 1989 c 416 § 3; 1988 c 275 § 17; 1987 c 430 § 1; 1973 1st ex.s. c 157 § 17.]

## **RCW 26.09.090**

### **Maintenance orders for either spouse or either domestic partner — Factors.**

(1) In a proceeding for dissolution of marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for maintenance following dissolution of the marriage or domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner, the court may grant a maintenance order for either spouse or either domestic partner. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to misconduct, after considering all relevant factors including but not limited to:

(a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of life, and other attendant circumstances;

(c) The standard of living established during the marriage or domestic partnership;

(d) The duration of the marriage or domestic partnership;

(e) The age, physical and emotional condition, and financial obligations of the spouse or domestic partner seeking maintenance; and

(f) The ability of the spouse or domestic partner from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse or domestic partner seeking maintenance.

[2008 c 6 § 1012; 1989 c 375 § 6; 1973 1st ex.s. c 157 § 9.]