

No: 45956-6-II

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

IN RE THE MARRIAGE OF:

PATRICIA MCCARTHY,
Respondent,

and

FEARGHAL MCCARTHY,
Appellant.

Appeal from the Superior Court of Clark County
Case No: 05-3-01349-1

**AMENDED OPENING BRIEF
OF APPELLANT**

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I. INTRODUCTION

This appeal arises from an Adjustment of Child Support proceeding. Fearghal is the primary parent. Patricia is the non-custodial parent. The main issues are whether the trial court erred by: i) improperly modifying the original Order of Child Support beyond what is statutorily permitted in a child support adjustment proceeding; ii) failing to apply the standards and instructions set forth in the State's Child Support Schedule; and iii) failing to comply with the statutory intent that child support orders provide support adequate to meet the basic needs of the children, commensurate with the parents' income, resources and standard of living, and equitably apportioned between the parents.

II. ASSIGNMENTS OF ERROR

A. Assignments of Error

NO. 1: The trial court erred by modifying an Order of Child Support in a an adjustment of child support proceeding, beyond those adjustments permitted by RCW 26.09.170(7)(a). The trial court further erred by making modifications to the support Order without any finding of a substantial change in circumstances. Erroneous modifications were made to provisions pertaining to: i) deviation, ii) tax exemption allocations, iii) post-secondary educational support, iv) payment of special expenses included in the monthly transfer payment, v) health insurance coverage, vi) termination of support, vii) payment of expenses not included in the transfer payment, and viii) life insurance.

NO. 2: The trial court erred by failing to apply the standards and instructions in the State's Child Support Schedule, as defined in RCW 26.19.011, to the evidentiary facts. Errors in the Child Support Worksheets include:

- a) The amounts stated for Patricia's federal income taxes and FICA taxes do not equate to her payroll stubs; nor do they account for the amount of Patricia's income tax refunds.
- b) The amount stated for Patricia's medical insurance costs for the children includes the portion of her insurance premiums attributable to Patricia's spouse and her other dependents.
- c) No amount is included in the worksheets to account for Fearghal's health insurance costs for the children.
- d) Incorrect line items yield a calculation that fails to provide support commensurate with the parents' income, resources, and standard of living, adequate to meet the children's basic needs, and equitably apportioned between the parents.

NO. 3: The trial court erred by ordering a deviation without the disclosure and consideration of all the income and resources of the parties, their spouses, and other adults in the households as required by RCW 26.19.075(2).

NO. 4: The trial court erred by setting a commencement date of its support order seven months after the adjustment motion was filed and almost three months after its verbal ruling, thereby

unreasonably prolonging the effective date of the economic adjustment necessary to insure that the support amount was adequate to meet the basic needs of the children; commensurate with the parents' income, resources, and standard of living; and equitably apportioned between the parents, as required by the statutory intent stated in RCW 26.19.001.

B. Issues Pertaining to Assignments of Error

NO. 1: In an adjustment proceeding based on changes in the parties' incomes, and absent any substantial change of circumstances, did the trial court err by modifying the child support Order beyond conforming that Order to the changes in the parties' incomes? Does an adjustment proceeding grant the court authority to make modifications to a support order that would be permissible in a petition for modification? (Assignment of Error #1).

NO. 2: Did the trial court err by adopting a Child Support Worksheet with line items not calculated in accordance with the standards and instructions set forth in the State's Child Support Schedule? Specifically, did the trial court err by adopting a Worksheet that:

- i) states amounts for Patricia's federal income taxes and FICA taxes that do not equate to her paystubs; and that, for federal taxes, fail to account for her expected income tax refunds;
- ii) includes in the stated amount of Patricia's health insurance premiums for the children the share of the insurance premium attributable to her spouse and other dependents;

- iii) fails to state an amount to reflect Fearghal's cost of providing medical insurance for the children;
- iv) yields only a nominal \$250 increase in the monthly transfer payment despite Patricia's monthly income increasing 122% from \$3,190 to \$7,083 since entry of the prior support order? (Assignment of Error #2).

NO. 3: Did the court err by ordering a deviation when the income and resources of the parties, their spouses and other adults in their households are not disclosed in the Child Support Worksheet for the court's consideration as required by RCW 26.19.075(2); and no findings of fact were entered evidencing that the court considered any of these factors (Assignment of Error #3).

NO. 4: Did the court err and fail to comply with the statutory intent stated in RCW 26.19.001 by setting a commencement date for the adjustment order three months after its verbal ruling and seven months after the adjustment motion was filed, thereby unfairly prolonging the economic adjustment that was necessary to insure that a timely adjustment to support to: adequately meet the needs of the children; be commensurate with the parents' income, resources, and standard of living; and equitably apportion support between the parents. (Assignment of Error #4).

III. STATEMENT OF THE CASE

A. Procedural History

The parties stipulated to a “Final Order of Child Support” and Worksheets entered on 1/23/2009 (CP 1-12). A stipulated Decree of Dissolution adopting this Final Order of Child Support was entered on 1/29/2010 (CP 13-17).

On 5/29/2013, Fearghal filed a Motion for Adjustment of Child Support requesting an increase in child support based on changes in the parties’ incomes citing a hearing date of 6/6/2013 (CP 29-36). The Court set over the hearing until 6/26/2013 and again until 7/24/2013. The hearing was postponed again due to summer vacation schedules. On 9/10/2013, Patricia filed a cross-motion for adjustment requesting a decrease in child support based on changes in the parties’ incomes (CP 92-105). On 10/9/2013, the court heard both parties’ adjustment motions and made a verbal ruling (CP 195). Patricia filed a proposed order of support for entry (CP 158-171). The Commissioner did not enter proposed orders at a hearing on 10/23/2013, indicating instead that she would prepare the orders for entry. The Commissioner issued a letter dated 11/21/2013 enclosing proposed orders and noting some paragraphs that she changed from the prior support order (CP 172). On 12/11/13, the court entered an Order re Adjustment of Child Support (CP 173-174), an Order of Child Support (CP 175-186) and Child Support Worksheets (CP 186-191).

Fearghal filed a Motion for Revision re Order for Adjustment of Child Support (CP 206). The motion was granted in part and denied in

part. On 1/31/2014 a revised Final Order of Child Support (CP 210-219) and revised supporting Child Support Worksheets (CP 220-223) (the "Adjusted Support Order") were entered, together with a revised Order re Motion for Modification/Adjustment of Child Support (CP 209).

B. Factual History

1. Background

The parties' dissolution action commenced in August 2005. The proceedings became highly adversarial after Patricia made multiple allegations to support motions to terminate Fearghal's contact with the parties' two children, attempted to get Fearghal deported (Fearghal is an Irish citizen), and more (CP 126, 193). Fearghal did not see his children for approximately two years (CP 126). Judge Poyfair decided to take over the case from Commissioner Scheinberg, and reinstated Fearghal's contact with the children (CP 193). Patricia was found in contempt of court no less than 32 times for multiple acts of misconduct and eventually admitted to making multiple false allegations against Fearghal, a drug abuse problem, and more (CP 18, 126, 193-194). Based on Patricia's admissions and their mutual desire to reduce conflict, the parties stipulated to a Parenting Plan entered on 10/27/08, a Final Order of Child Support entered on 1/23/09, and a Decree of Dissolution adopting these orders on 1/29/10.

Patricia stopped making her child support payments and was held in contempt on 6/7/11 (CP 17-21). Patricia was ordered to "keep father apprised of her monthly household income." (CP 24). Her non-payment continued resulting in \$19,000 of child support arrears.

representing over 22 months of arrears at 8/30/12 (CP 198). Patricia failed to disclose commission income from new employment that she obtained in August 2012 (CP 198). In March 2013, Patricia again obtained new employment. Fearghal filed a Motion for Adjustment. As Judge Poyfair had retired, the case was reassigned back to Commissioner Scheinberg.

2. Facts Relevant to Assignment of Error #1.

In stipulating to the Final Order of Child Support and Worksheets (CP 1-12) (the “Original Support Order”) that were adopted in the Decree of Dissolution (CP13-17), the parties considered multiple factors based on their personal and mutual knowledge of their individual households, personal circumstances, and the children’s financial needs (CP 195, Par 6). Factors considered and agreed upon by the parties included providing an amount to fund the ongoing educational and extra-curricular activities of the children in the monthly transfer payment; that no deviation was necessary for Patricia’s third biological child who was already fully provided for as Patricia lived in a dual income household with the child’s father while awaiting marriage; the parties’ respective earning potential; the parties’ desire for the children to pursue post-secondary education; the parties’ desire to limit future litigation by contracting for automatic periodic adjustments upon the children changing age brackets; healthcare insurance, and more (CP 1-12, CP 195). Negotiating and stipulating to this Original Support Order, and the Decree of Dissolution, required great effort and patience by both parties’ after years of adversarial litigation; and Judge Poyfair made a point of

applauding the parties in working together to reach a stipulated resolution.

In its 12/11/13 Order re Adjustment of Child Support, the court's only finding was that the parties' incomes had changed (CP 173-174). The court made no finding of a "substantial change in circumstances" or any other finding that met the statutory conditions for modification set forth in RCW 26.09.170. No Petition for Modification of Child Support was filed.

The Adjusted Support Order (CP 210-219) and its supporting Worksheets (CP 220-223) were entered based on an Order of Adjustment (par 2.1, CP 210). In addition to adjusting support for changes in the parties' incomes, the Adjusted Support Order made extra modifications to the Original Support Order and its Worksheets including:

- i) Adding a deviation reducing support by \$223 per month (CP 3, 212, Par. 3.5 & 3.7) even though there was no change in circumstances from the Original Support Order, which fully took into account and noted in its Worksheets the support already available for Patricia's third biological child "EM", specifically the additional \$5,000 monthly household income being earned by EM's father who living with Patricia, and which stated clearly in Line 22 the parties' agreement that no deviation was being requested (CP 11);
- ii) Removing the \$230 per month included in the Worksheets of the Original Support Order to fund ongoing special (i.e. educational and extracurricular) expenses of the children (CP 9, CP 221);

- iii) Modifying the allocation of tax exemptions provision (Par 3.17) by changing the allocation from Fearghal to Patricia (CP 5, 215);
- iv) Modifying the termination of support paragraph of the Original Support Order (Par 3.13) stating that support would continue until the latter of the children remaining enrolled in an accredited high school or an accredited post-secondary school (CP 4, CP 213);
- v) Multiple modifications to the post secondary educational support paragraph (CP 4, Par 3.14) in the Original Support Order including:
 - a) removing the formula for calculating post-secondary educational support and instead requiring a court determination if the parents are unable to agree (CP 4-5, CP 213, par 3.14 (2)), and then imposing an additional requirement setting a deadline for a parent to seek a court determination (CP 214, par 3.14(3));
 - b) removing the requirement for parents to make payments directly to educational institutions within 10-days of their due date and for Patricia to reimburse educational expenses paid by Fearghal with 15 days of presentation of bills (CP 4-5, CP 214);
 - c) adding a new provision requiring the child's full-time attendance at an accredited school thereby eliminating the flexibility of the child to both work and study part-time if that best serves the interests of the child (CP 4-5, CP 214, par 3.14(10),(11)); and
 - d) adding other conditions for the children to receive support which were not included in the Original Support Order (CP 4-5, 214).

- vi) Modifying Paragraph 3.15 of the Order pertaining to “Payment for Expenses not included in the Transfer Payment” by placing limitations on educational expenses, limiting the amount of college applications for the children, imposing an automatic waiver of reimbursement, and changing the provision with respect to payment of any long distance transportation expenses. (CP 4-5, 214-215); and
- vii) Modifying Par 3.18 of the Original Support Order requiring both parents to provide health insurance for the children that is available through employment as long as the cost does not exceed 25% of the parent’s basic support obligation (CP 6, CP 217).

3. Facts Relevant to Assignment of Error #2

3.1. Payroll Taxes: Patricia’s most recently filed paystub dated 09/13/2013 (CP 108) evidences that Patricia’s bi-weekly payroll deductions are \$128.31 for federal income taxes, \$233.59 for FICA taxes (\$189.31 for Social Security plus \$44.28 for Medicare), \$3.72 for Worker’s Compensation, and \$215.77 for medical and dental insurance premiums. Converting these biweekly deductions into monthly amounts (26 weeks/12 months) yields the following monthly equivalents:

| | |
|----------------------|---|
| Federal income taxes | $\$128.31 * 26/12 = \278.01 per month |
| FICA taxes | $\$233.59 * 26/12 = \506.11 per month |
| Workers Compensation | $\$3.72 * 26/12 = \8.06 per month |

Patricia filed a Deduction Chart (CP 110) showing her calculation of the monthly equivalents of her bi-weekly “Payroll Tax Deductions” of \$792.18 per month ($\$278.01 + \$506.11 + \8.06), which is in agreement with the calculations above. However, the Worksheets (CP 220) supporting the

Adjusted Support Order show different amounts as follows:

| | | |
|----------------------|-----------|-------------------|
| Federal income taxes | (Line 2a) | = \$689 per month |
| FICA taxes | (Line 2b) | = \$542 per month |
| Workers Compensation | (Line 2c) | = \$5 per month |

The above line items in the Worksheets do not agree with the parties' agreed computations of Patricia's payroll taxes based on the plainly stated amounts in Patricia's paystubs.

3.2. Income Tax Refund: Patricia's 2012 federal income tax refund was \$7,041 (CP 65). Patricia states an ongoing expected tax refund of \$1,400 per annum (CP 111), which equates to \$116.67 per month. This expected tax refund for Patricia was not accounted for in the calculation federal taxes in Line 2a of the Worksheet (CP 220).

3.3. Patricia's Health Insurance Premium Costs:

Patricia states five dependents in her financial declaration (CP 82). The five dependents consist of the parties' two children and three other minor children (including Patricia's third biological child and her husband's two children) that Patricia lists as dependents living in her household in her declaration filed on 9/10/2013 (CP 94).

Patricia's paystub (CP 108) along with a "Health Insurance Premium Chart" (CP 74) evidence a bi-weekly payroll cost of \$215.77 for medical and dental insurance. The "Health Insurance Premium Chart" evidences that \$130.17 of the \$215.77 total bi-weekly premium is attributable to Patricia and her spouse. This leaves an amount of \$85 per payroll period attributable to the five claimed minors covered by Patricia's health insurance which means that only two fifths of this \$85 amount is

attributable to the parties' two children. The Worksheets incorporated into the Adjusted Support Order list just one child "EM" living in Patricia's household. If only three minors (instead of the five minors as claimed by Patricia) are covered by Patricia's health insurance, then one third of the \$85 amount would be attributable to "EM" and two thirds to the parties' two children. This calculates to is \$56.66 per payroll period (i.e. $\$85 \times \frac{2}{3}$) which equates to \$122.77 per month ($\$56.66 \times \frac{26}{12}$). The Worksheets for the Adjusting Support Order, in Line 10(a), state an amount for Patricia's health insurance costs of \$333 per month (CP 221) instead of the premium cost attributable to the parties' two children of \$122.77 per month.

3.4. Fearghal's Health Insurance Premium Costs: The trial court made a finding that health insurance coverage for the children was available and accessible to Fearghal at a monthly cost of \$260.68. (CP 216, Par 3.18.1). This amount is based on a \$130.34 cost per child as set forth in a rate sheet from LifeWise Health Plan (CP 30). The Worksheets for the Adjusting Support Order, in Line 10(a), do not include the cost of Fearghal's health insurance for the children (CP 221).

3.5. Overall Effect of Errors: Fearghal sought an increase in child support for the first time since the 1/23/2009 Original Support Order, due to his household expenses exceeding his current income (CP 126, Par 4) and Patricia's increased income. Despite the 122% increase, from \$3,190 to \$7,083, in Patricia's monthly income, the adjusted support yields only a very nominal \$250 increase in the monthly transfer payment. The removal the federal income tax exemptions from Fearghal's household, where the

children reside, results in the loss of tax credits and benefits that have a negative economic effect on Fearghal's household that greatly exceeds the nominal \$250 increase in the monthly transfer payment, and in fact leaves Fearghal's household worse off and with less support for the children.

4. Facts Relevant to Assignment of Error #3

The Worksheets for the Adjusted Support Order (CP 220-224) list the adults residing in Petitioner's household as her current spouse, Shaun Martin, and her stepdaughter, Adrienne Martin. Neither the Child Support Worksheets nor Patricia's financial declaration (CP 79-84) disclose the income and resources of Patricia's spouse and adult stepdaughter who reside in her household. Nor were any findings entered in the Adjusted Child Support Order (CP 210-219) or elsewhere evidencing that the court actually considered the income and resources of the parties' households and of other adults living in Patricia's household.

5. Facts Relevant to Assignment of Error #4

The commencement date in the new Adjusted Order of Child Support is set to seven months after the 05/29/13 date that Fearghal filed his Motion for Adjustment of Child Support. The court postponed the initial hearing date which ultimately resulted in a ruling not taking place until 10/09/2013, more than four months later. Patricia's proposed adjusted orders of child support, which suggested a commencement date of 10/1/13 (CP 162), were presented but did not get entered. Instead, the Commissioner decided to draft the orders herself, which delayed entry of the adjusted order of child support until 12/11/13 (CP 172). The Adjusted

Support Order stated a new commencement date postponed to 01/01/2014 (CP 178), which is three months later than the commencement date proposed by Patricia, and seven months after the adjustment motion was actually filed for hearing.

IV. ARGUMENT

A. Standard of Review

In general, child support orders are reviewed for an abuse of discretion. In re Marriage of Schumacher, 100 Wn. App. 208, 211, 997 P.2d 399 (2000). An exception to this general rule applies when the appellate court stands in the same position as the trial court and considers only documents, such as declarations, in reaching its decision; in which case appellate review is *de novo*. See, In re Marriage of Flynn, 94 Wn. App. 185, 190, 972 P.2d 500 (1999); Danielson v. City of Seattle, 45 Wn. App. 235, 240, 724 P.2d 1115 (1986); Smith v. Skagit County, 75 Wn.2d 715, 718-19, 453 P.2d 832 (1969).

The record before the court in this case consists only of written materials and documentary evidence before the trial court. Further, the matters under review are the trial court's conclusions of law and its application of the law. Review of conclusions of law is always *de novo*. Miles v. Miles, 128 Wn. App. 64, 114 P.3d 671 (2005). Review of a trial court's application of law is also *de novo*. State v. Park, 88 Wn. App. 910, 914, 946 P.2d 1231 (1997). Under *de novo* review, no deference is accorded to the trial court's ruling. State v. Henjum, 136 Wn. App. 807.

810, 150 P.3d 1170 (2007). Accordingly, the standard of review for this appeal is *de novo* and the court may substitute its judgment for that of the trial court.

Notwithstanding the *de novo* standard applicable in this case, the trial court did abuse its discretion. "Discretion is abused where it is exercised on untenable grounds or for untenable reasons." In re Marriage of Tang, 57 Wn. App. 648, 653, 789 P.2d 118 (1990). Further, the trial court's findings of fact must be supported by substantial evidence. Schumacher, 100 Wn. App. at 211 (citing In re Marriage of Peterson, 80 Wn. App. 148, 153, 906 P.2d 1009 (1995)). Substantial evidence is that which is sufficient to persuade a fair-minded person of the declared premise. In re Marriage of Hall, 103 Wn.2d 236, 246, 692 P.2d 175 (1984). "A trial court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law." Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054 (1993). A court's decision is manifestly unreasonable "if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard." In re Marriage of Littlefield, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).

B. Error #1: Modifications to an existing child support order are impermissible in an adjustment proceeding on a change in the parents' incomes, beyond those adjustments necessary to conform that child support order to the changes in parents' incomes; and the court may not make such other modifications as if a petition for modification had been properly granted.

1. A modification and adjustment are different.

Finality best serves the emotional and financial interests affected by family law matters. In re Marriage of Choate, 143 Wn. App. 235, 177 P.3d 175 (2008). A modification petition or an adjustment motion are the only two exceptions to the principle of finality that allow a child support order to be altered, provided certain conditions are met. RCW 26.09.170. However, the statutory requirements, procedures and Court's authority to alter a child support order by modification are very distinct and separate from those in an adjustment proceeding. In re Marriage of Scanlon, 109 Wn. App. 167, 34 p.3D 877 (2001).

A modification action is commenced by service of a summons and petition and it is resolved by trial. RCW 26.09.175. Absent the specific exceptions listed in the statute, modification requires a showing of a substantial change of circumstances. RCW 26.09.170(1). A modification is "significant in nature and anticipates making substantial changes and/or additions to the original order of support". Scanlon at 173. The court has broad discretion in a modification petition. In re Marriage of Dodd, 120 Wn. App. 638 , 644, 86 P.3d 801 (2004).

In contrast, an adjustment action is more limited in scope than a petition for modification. Scanlon at 173. Adjustments can be

requested every 24 months on a change of income of the parties without showing a substantial change of circumstances. RCW 26.09.170(7)(a). “This routine action may be effected by filing a motion with the court for a hearing. RCW 26.09.170(7)(b). No summons or trial is necessary. An adjustment action therefore simply conforms existing provisions of a child support order to the parties' current circumstances.” Scanlon at 173.

An adjustment is permitted for changes in the parties' income or changes in the economic table or standards, or when a child changes age category. RCW 26.09.170(7)(a), RCW 26.09.170(6)(b). No other statutory conditions permit an adjustment. Failing these conditions, a child support order cannot be altered unless the more stringent statutory conditions for modification, such as showing a substantial change in circumstances, are met. RCW 26.09.170. Routine change of incomes do not constitute a substantial change of circumstances. Scanlon at 173. A substantial change of circumstances must be something that was not contemplated at the time the dissolution decree was entered. In re Marriage of Moore, 49 Wn. App. 863, 865, 746 P.2d 844 (1987).

An adjustment proceeding on a change in the parties incomes, therefore, only anticipates limited alterations that update the calculations and provisions in an existing child support order pertaining to the parties' changed incomes, and does not anticipate any other modifications that *unnecessarily* alter the non-income related provisions of the support order.

2. The statutory constraints on finality that are applicable in an adjustment proceeding must be respected.

In this case, an adjustment was authorized based solely on changes in the parties' incomes. RCW 26.09.170(7)(a). No other statute or rule permits modifying or altering the Original Support Order.

A trial court does not have authority to modify its own decree in the absence of conditions justifying the reopening of the judgment. In Re Marriage of Thompson, 97 Wn. App 873, 878, 988 P.2d 499 (1999) (citing RCW 26.09.170(1)). A court may reopen a final judgment only when a statute or court rule specifically authorizes it to do so, and then may only act *within the constraints of that authority*. In re Marriage of Shoemaker, 128 Wn.2d 116, 120, 904 P.2d 1150 (1995). The constraints imposed on the court's authority by RCW 26.09.170(7)(a) when considering an adjustment motion based on changes in the parties incomes, (i.e. doing no more than conforming the order to changes in the parties' incomes), must be respected, and cannot be expanded to adopt the different and broader constraints to the court's authority that are applicable in a modification petition.

3. Unpermitted modifications undermine the legislative intent that child support be adjusted for changes in the parents' incomes.

The differentiation between modification and adjustments and their anticipated outcomes is important. A modification balances the principle of finality against the support needs for the children when there is a substantial change in circumstances or a specific condition permitted by statute, which is not a change in the parties' incomes. RCW 26.09.170.

The expectation is that the support order may be substantially revised. Scanlon, supra. An adjustment, on the other hand, balances the principle of finality with the statutory intent that child support is kept adequate and commensurate with parents' incomes. RCW 26.19.001. In an adjustment proceeding, parties - and Fearghal certainly did - have an expectation that the principle of finality will be upheld except for making the adjustments necessary to conform the support order to changes in the parties' incomes.

Parents and the courts have a duty to ensure that child support is adjusted when the parents' incomes change. When the limited scope of an adjustment proceeding is violated, and instead used as a mechanism to substantially alter a child support order with unanticipated modifications unrelated to changes in the parties' incomes, it discourages parents from seeking adjustment when adjustment is in the best interests of the child. This undermines the legislative intent that support orders are adjusted when necessary in order to insure that child support is kept commensurate with parents' incomes and equitably allocated between parents.

4. The trial court made multiple modifications that are not permitted in an adjustment proceeding.

4.1 Summary:

"A modification is when the rights given to one party are extended beyond the scope originally intended, or reduced." Thompson, at 878. A substantial change in circumstances is one that was not contemplated at the time the original order of support was entered.

Scanlon at 173. In this case, without any finding of a substantial change of circumstances and with only a Motion for Adjustment before it, the court made multiple and substantial modifications to the child support order that went far beyond the changes necessary to conform the Original Support Order to changes in the parties' incomes. Without a substantial change of circumstances and with only a Motion for Adjustment before the court, there is no legal basis for modifying any provisions of the Original Support Order beyond adjusting those calculations and provisions pertaining solely to changes in the parties' incomes. Despite this, the trial court made the following multiple modifications to the support order under the color of a motion of adjustment. This is untenable given the facts, the legislative intent, the absence of a finding of a substantial change in circumstances, and the applicable legal standards outlined above.

4.2 The Deviation Modification:

The court granted a deviation for Patricia's biological child from another relationship, "EM", who was born on 9/4/2007 prior to the 1/23/2009 entry of the Original Support Order and the 1/29/2010 Decree of Dissolution. (CP 212). The Worksheets incorporated into the Original Support Order (CP 1-12) note that "EM" is "age 1" living in Patricia's household (Line 21)¹; that Shaun Martin, "EM's" father, had income of \$5,000 per month and is also living in Patricia's household (Line 18b); and the parties agreed not to request a deviation (Line 22). (CP 11). The

¹ "JM, listed on Line 21, is Shaun Martin's biological child from his prior marriage.

parties did not request a deviation because “EM” was being supported by Patricia and “EM’s” father in a dual income household. The Worksheets incorporated into the Adjusted Support Order state “No deviation was ordered in the prior support order entered on 1/23/2009 for mother’s third biological child based on the stipulation of the parties.” (CP 223, Line 26). There has been no substantial change in circumstances since entry of the Original Support Order. “EM” continues to live with Patricia and her father in a dual income household. Therefore, no deviation is permitted.

In re Marriage of Burch, 81 Wn. App. 756, 916 P.2d 443 (1996), a husband had additional biological children from another relationship also born before entry of the divorce decree. A modification petition was before the court. The trial court granted a deviation. The appeal court noted, “deviation from the standard support obligation remains the exception to the rule and should be used only where it would be inequitable not to do so.” Id at 760. The Burch court reversed the trial court. “It is well settled that support orders may be modified only upon an unanticipated change of circumstances occurring since the former decree. In our view, a deviation should likewise be based upon circumstances not existing or contemplated at the time of the prior order.” Id at 761. Similarly, the trial court’s order on deviation in this case lacked any substantial change in circumstances and was in error.

4.3 Exclusion of Special Expenses:

In stipulating to the Original Support Order, the parties considered the children's ongoing educational and extracurricular activity expenses being paid by Fearghal and included an amount of \$230 a month in Line 9 of the Worksheets for these expenses (CP 9). In the Adjusted Support Order, the court did not include this amount in the Worksheets (CP 221). These expenses have not declined to zero, if anything they have increased as the boys have gotten older and advanced in their educational, soccer and other activities. The inclusion of these expenses in the Worksheets is necessary to ensure that support is adequate to enable the children continue with their extracurricular activities. These special child rearing expenses are not included in the economic table and are required to be shared by the parents in the same proportion as the basic child support obligation. RCW 26.19.080(3). The exclusion of this \$230 monthly amount of educational and extracurricular expenses from the adjusted Worksheets violates this statute. The exclusion is another unnecessary modification made without any substantial change in circumstances. It is therefore error. Also, there is no prejudice to Patricia in maintaining this amount from the Original Support Order because Patricia has the right to seek reimbursement for any overpayment. RCW 26.19.080(3).

4.4 The Reallocation of Federal Tax Exemptions:

The trial court reallocated the federal tax exemptions for the children from Fearghal to Patricia. This reallocation has a significant

detrimental economic effect to Fearghal due to the loss of the child tax credits as well as the reallocation of tax exemptions. The parties previously agreed that Fearghal would get the tax exemptions not only because the children were residing primarily with Fearghal, but also because of the parties' expectation that Fearghal's lower income would qualify him for the child tax credits, while Patricia's higher income would not. The reallocation of the federal tax exemptions results in the loss of \$2,000 in federal tax credits in support from Fearghal's household. This is not in the children's best interests. Further, the reallocation is unnecessary to conform the support order to the parties' changes incomes, and is not based on any substantial change in circumstances. It is therefore an unnecessary modification made in error.

4.5 Modification of the Termination of Support Provision:

The parties stipulated to an expectation that their children would attend post-secondary education (CP 4, Par 3.14). To avoid the potential for future litigation in the period between the children finishing high-school and attending college, the parties agreed in the Original Support Order that support would continue until the latter of the children remaining enrolled in an accredited high-school or an accredited post-secondary school. The trial court changed the contractual rights in the Original Support Order by modifying this provision so that support will now terminate upon the child finishing high-school unless a parent "brings the matter back before the court". (CP 213-214). This modification imposes a new condition on the parties that was not part of the contract

and which only serves to promote future litigation, which the parties seek to limit. This modification is unnecessary to the adjustment motion, and is not based on any substantial change in circumstances. The modification is therefore made in error.

4.6 Modification of Post-Secondary Educational Provision:

The Original Support Order provided a formula for calculating post-secondary educational support, together with directions that payments to educational institutions be made within 10 days of their due date, and that Patricia's share of any other educational expenses shall be paid to Fearghal within 15 days of presentation of bills, receipts or other supporting documentation. (CP 4-5).

The court substantially rewrote the Post-Secondary Education Provision as detailed in paragraph B.2 of Section III above: i) replacing the formula in the Original Support Order with a provision that support would terminate unless a party sought a court determination before the child turned 18 or finished high-school; ii) removing the 10-day requirement for parents to pay to educational institutions directly, iii) removing the requirement that Patricia to reimburse educational expenses paid by Fearghal with 15 days of presentation of bills (CP 213-214); and iv) removing the ability of the child to both work and attend school part-time by requiring the child's full-time attendance at school.

Continuing jurisdiction in child support matters is not a license to relitigate settled matters without the requisite showing of changed circumstances. Burch, at 761-762 (citing, In re Marriage of

Trichak, 72 Wn. App. 21, 24, 863 P.2d 585 (1993)). The post-secondary educational support provision in the stipulated Original Support Order resolved mutual concerns. An agreed formula for apportioning post-secondary educational support served the parties better than leaving the issue open for future litigation. Agreed timelines for payment of bills minimized the potential problems with non-payment or delayed payment, which has been a major issue for the parties historically. The automatic extension of support for as long as the children remained in an accredited post-secondary school avoided the contractual limitation on commencing a child support modification action imposed by the trial court. While Fearghal does not object to the added elements of the rewritten provision which incorporate existing relevant statutory provisions (e.g. support ceases when the child is 23), these elements are already presumed. In re Marriage of Briscoe, 134 Wn.2d 344, 348, 949 P.2d 1388 (1998). But the court made modifications to this provision which change the contractual terms from the Original Support Order and even reopen the door for litigation when the formula and terms for post-secondary educational support was already resolved. The modifications to the post-secondary educational support provision are unnecessary to the adjustment motion, and are not based on a substantial change in circumstances. The modifications are made in error.

4.7 Modification of “Payment for Expenses not included in the Transfer Payment”:

It is unnecessary for the trial court to change the contractual terms of this provision by placing limitations on educational expenses, limiting the amount of college applications for the children, imposing an automatic waiver of reimbursement, and changing the terms with respect to payment of any long distance transportation expenses in order to conform the Original Support Order to the parties’ changed incomes. Absent a finding of any change in circumstances, the modifications made by the court to this provision are error.

4.8 Modification of Health Insurance Provision:

It is unnecessary for the court to remove the obligation of both parents to provide health insurance for the children that is available through employment as long as the cost does not exceed 25% of the parent’s basic support obligation. The court did so for Fearghal. (CP 217) Fearghal wishes to carry health insurance for the children on these terms and does not want to be prohibited from carrying health insurance for the children as their primary parent and from having his cost of health insurance included in the Worksheet calculations. Fearghal’s ability to provide health insurance for the children is in their best interests, especially as the degree of parental communication and cooperation can be inconsistent varying from normal to none. Absent any change in circumstances, the modifications made by the court to this provision are error.

5. Prejudice exists from denial of due process:

Both parties filed adjustment motions based on changes in their incomes. (CP29-31, CP 92). Therefore, Fearghal was limited to presenting evidence on this sole issue. Neither party filed a modification petition. Fearghal was not served with a modification petition or summons, nor was he permitted to conduct discovery, submit evidence or prepare a response to any modification issues. Accordingly, Fearghal was caught by surprise at the 10/9/2013 adjustment hearing when the court unexpectedly ruled sua-sponte to modify provisions of the support order unrelated to changes in the parties' incomes; and further surprised when the Commissioner issued a 11/21/2013 letter advising the parties of additional unexpected modifications to the support order (CP 172). This was a denial of due process, which was prejudicial to Fearghal. "Notice and the opportunity to be heard on matters which materially affect a litigant's rights are essential elements of due process that may not be disregarded." In re Marriage of Mahalingam, 21 Wn. App. 228, 584 P.2d 971 (1978).

C. Error #2: Failure to apply the standards and instructions in the State's Child Support Schedule, as defined in RCW 26.19.011, to the evidentiary facts is error. Miscalculations constitute error.

1. Summary:

Our legislature finds that its goals pertaining child support are best achieved by the adoption and use of a statewide child support schedule. RCW 26.19.001. The benefits intended by a uniform statewide

child support schedule include increased adequacy of child support, increased equity by providing for comparable orders in cases with similar circumstances, and greater predictability in the results achieved so as to reduce child support litigation. RCW 26.19.001. The Courts must apply the State's Child Support Schedule in all child support proceedings and in setting all orders for child support. RCW 26.19.035. "Child support schedule" means the standards, economic table, worksheets, and instructions, as defined in the statute. RCW 26.19.011. In summary, the application of the standards and instructions is mandatory. A copy of the Washington State Child Support Schedule is attached in Appendix II.

2. Calculation of Federal Income Taxes

Common sense dictates that calculations of line items stated in the Child Support Worksheets should be mathematically correct to avoid legal error. A correct calculation of Patricia's monthly deduction for federal income taxes based on her paystub is \$278 per month (Section III, par B.3.1). However, "the amount of income tax withheld on a paycheck may not be the actual amount of income tax owed due to a tax refund etc. It is appropriate to consider tax returns from prior years as indicating the amount of income tax owed if income has not changed." (Child Support Schedule, Page 6, Line 2a re Income Taxes). A reasonable interpretation of this instruction in the Child Support Schedule is that tax refunds should be taken into account when determining an appropriate deduction for federal income taxes. Otherwise, parents could increase their

payroll tax deduction to generate an offsetting tax refund and thereby artificially minimize their child support obligation. Patricia's refund for 2012 was \$7,041 (CP 65). Due to higher income, Patricia states an expected annual tax refund of \$1,400 for the 2013 and future tax years (CP 111). This equates to \$116.67 per month (Section III, par B.3.2). This \$116 amount should be deducted from the \$278 calculation based on her paystub to in order to give effect to her expected tax refund. Accordingly, the correct amount that should be stated in the Worksheets for Patricia's federal income taxes is \$162 (i.e. \$278-\$116) and not the amount of \$689 that is stated (CP 220). This represents a difference of \$527. This is error.

3. Calculation of FICA Taxes:

A correct calculation of Patricia's monthly deduction for FICA taxes is \$506 per month. (Section III, par B.3.1). This is the amount that should be stated in the Worksheets. Instead, an incorrect amount of \$542 is used. (CP 220). This is error.

4. Patricia's Health Insurance Premium Costs:

Only the children's portion of a health insurance premium paid by a parent should be included in the Worksheets. "The credit may not include...any portion of premium not covering the children at issue." Scanlon, at 175. See also, In re Marriage of Goodell, 130 Wn. App 381, 392 (2005). "When determining an insurance premium amount, do not include the portion of the premium paid by the employer or other third party and/or the portion of the premium that covers the parent or other

household members.” (Child Support Schedule, Page 7, Line 10a). The portion of Patricia’s health insurance premium apportioned to the parties’ two children amounts to \$122.77 per month (Section III, par B.3.3). An amount of \$333 is stated in the Worksheets (CP 221). This represents a difference of \$210. This is error.

5. Fearghal’s Health Insurance Premium Costs:

The trial court made a finding that health insurance coverage for the children was available and accessible to Fearghal at a monthly cost of \$260.68 (CP 216, Par 3.18.1), based on a \$130.34 per child cost as set forth in a rate sheet from LifeWise Health Plan (CP 30). “Health care costs are not included in the economic table. Monthly health care costs shall be shared by the parents in the same proportion as the basic child support obligation.” RCW 26.19.080. It is in the children’s best interests that Fearghal also maintains health insurance for the children. This is especially so because the children have incurred sports injuries on occasion, Patricia has not maintained her insurance when changing jobs, and the parties parenting relationship and communication has historically been inconsistent. The Worksheets for the Adjusting Support Order, in Line 10(a), do not include the cost of Fearghal’s health insurance for the children (CP 221) as required by the statute. This is error.

6. Daycare and Special Expenses Credit:

The Worksheets fail to include expenses incurred by Fearghal for educational and extracurricular activities of the children. These expenses

should be shared by the parents. RCW 26.19.080(3). This is error as these expenses were included in the Worksheet for the Original Support Order. (see Section IV, par B 3.3 above) and their exclusion is an improper modification made without any substantial change in circumstances.

7. Cumulative Effect of Errors:

The cumulative effect of these errors in the line items used for the calculations in the Worksheet is not insignificant. Due to multiple line items being erroneous, the calculation for basic support is erroneous. The large variances and errors between the amounts stated in line items in the Worksheets and the amounts correctly calculated in this brief is untenable, insofar as it completely undermines the intended benefits of a uniform statewide child support schedule to provide increased adequacy of child support, increased equity by providing for comparable orders in cases with similar circumstances, and greater predictability in the results achieved so as to reduce child support litigation.

D. Error #3: Ordering a deviation without disclosure and consideration of the resources of the parties, their spouses and other adults in the parties' households and without making specific written findings pertaining to such consideration, constitutes legal error.

All income and resources of the parties before the court, new spouses or new domestic partners, and other adults in the households shall be disclosed and considered before ordering a deviation. RCW 26.19.075(2). Neither the Child Support Worksheets (CP 220-223) nor Patricia's financial declaration (CP 79-84) disclose the income and

resources of Patricia's spouse and adult stepdaughter who reside in her household. Therefore the statutory requirements pertaining to disclosure and consideration for a deviation have not been met.

“When the court has determined that either or both parents have children from other relationships, deviations under this section shall be based on consideration of the total circumstances of both households. RCW 26.19.075(1)(e)(iv). “The court shall enter findings that specify reasons for any deviation or any denial of a party's request for any deviation from the standard calculation made by the court.” RCW. 26.19.075(3). The statute “unequivocally requires written findings of fact to support any deviation and a consideration of the total circumstances of both households.” In re Marriage of Choate, 143 Wn. App. 235, 242, 177 P.3d 175 (2008). “Although cursory findings of fact and the trial record might appear to justify awarding a child support amount that exceeds the economic table, only the entry of written findings of fact demonstrate that the trial court *properly exercised its discretion* in making the award.” Choate, citing In re Marriage of McCausland, 159 Wn.2d 607, 616, 152 P.3d 1013 (2007).

The acceptance of and reliance on the whole family formula as a basis for deviation absent “findings showing consideration of all household circumstances constitutes error similar to that our Supreme Court noted in McCausland. As in McCausland, any deviation from the standard calculation is necessarily a fact-intensive decision.” Choate at 242. “Acknowledgement of other children and the mere listing of other

household income or a recitation that the trial court considered or was aware of other household income are insufficient to support a child support deviation.” Choate at 242. “Mechanical extensions of chapter 26.19 RCW do not satisfy the statute’s requirements.” McCausland, 159 Wn.2d at 620-21. In this case, the court entered findings of fact stating that a deviation of \$223 was being ordered based on a mathematical calculation using the “whole family formula” (CP 212, par 3.5). No written findings were entered evidencing that the court gave consideration to the total circumstances of both households. This was error. Insufficient findings were entered by the trial court to support a deviation.

E. Error # 4: Setting a commencement date of an adjustment order to seven months after the motion was filed violates the statutory intent to ensure support is adequate to meet the basic needs of the children; commensurate with the parents’ income, resources, and standard of living; and equitably apportioned between the parents; and constitutes an abuse of discretion.

In establishing the child support schedule, the legislature intended to insure that every child support order meets the child's basic needs and provides additional financial support commensurate with the parents' income, resources and standards of living. RCW 26.19.001; In re Marriage of Leslie, 90 Wn. App. 796, 803, 954 P.2d 330 (1998). In this case, the court had discretion to remedy the series of scheduling delays in hearing the matter and entering its orders by setting a commencement date for the order closer to the 5/29/13 date that the adjustment motion was filed. Instead, the court set a 1/1/14 commencement date for the Adjusted

Support Order (CP 212). This is 90 days after the commencement date proposed by Patricia (CP 162) and seven months after the adjustment motion was first filed. The delayed commencement date was prejudicial to the children and to Fearghal by unreasonably deferring and thereby denying the timely adjustment of support necessary to ensure that the child support amount was adequate to meet the children's needs, was commensurate with the parents' income, resources and standards of living, and was equitably apportioned between the parents, pursuant to the statutory intent. The trial court could have exercised its discretion to set a commencement date within 90 days of the date of Fearghal filing his motion of adjustment but did not do so.

Justice in all cases shall be administered openly, and without unnecessary delay. Const. art. I, §10. Every cause submitted to a judge of a superior court for his decision shall be decided by him within ninety days from the submission thereof; *provided*, that if within said period of ninety days a rehearing shall have been ordered, then the period within which he is to decide shall commence at the time the cause is submitted upon such a hearing. Const. art. IV, §20. In this case, the matter was not heard timely. Justice delayed is justice denied. Four months elapsed between the submission of the adjustment motion and the actual 10/9/13 hearing. There is an additional three month gap between the hearing/ruling date and the commencement date of the Adjusted Support Order for a seven months time difference in total. The setting of a commencement date seven months after the adjustment motion was filed violated the

statutory intent stated in RCW 26.19.001 and the constitutional safeguards for timeliness. The deferred commencement date had practical and identifiable consequences of deferring and denying the timely adjustment of child support and was therefore a manifest abuse of discretion.

F. Attorneys Fees and Costs

Pursuant to RAP 14.2, RAP 18.1, and RCW 26.09.140 Fearghal requests statutory attorney's fees and plus costs estimated at \$600 based on the disparity in the parties' incomes, financial need and the substantial arrears that remain due from Patricia in back child support. A cost bill will be provided.

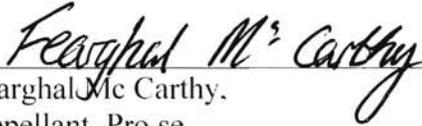
V. CONCLUSION

The Adjusted Order of Child Support entered on 1/31/14 is based on multiple errors of law, erroneous conclusions of law and the erroneous application of the law. Specifically, the trial court made multiple modifications for which there is no legal basis, failed to properly and fully apply the standards set forth in the Washington State Child Support Schedule as evidenced by the erroneous calculations of multiple line items in the Worksheets, and set a deferred commencement date that is prejudicial to the timely adjustment of support.

Fearghal requests this Court to review this appeal de novo, to vacate the Child Support Order entered by the trial court on 1/31/14, and

to direct Fearghal to draft an amended Child Support Order for entry in the trial court in accordance with this Court's rulings.

RESPECTFULLY SUBMITTED ON THIS 7th day of July 2014.



Fearghal Mc Carthy,
Appellant, Pro se

VI. APPENDICES

3. In re Marriage of Scanlon, 109 Wn. App. 167, 34 p.3D 877 (2001)
4. Washington State Child Support Schedule

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109 Wn.App. 167 (Wash.App. Div. I 2001)

34 P.3d 877

In re the MARRIAGE OF Barry Francis SCANLON, Appellant,

and

Bonnie Jean WITRAK, Respondent.

No. 45213-4-1.

Court of Appeals of Washington, Division I.

November 19, 2001.

Reconsideration Denied Dec. 19, 2001.

[34 P.3d 878] [Copyrighted Material Omitted]

[34 P.3d 879] [Copyrighted Material Omitted]

[34 P.3d 880] [Copyrighted Material Omitted]

[34 P.3d 881]

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Barry Francis Scanlon, Atlanta, Counsel for Appellant.

Carol Farr, Renton, Counsel for Respondent.

BAKER, J.

Barry Scanlon appeals an order on modification of child support that increased his child support obligation, allocated long distance transportation expenses and tax exemptions, and ordered postsecondary educational support, but failed to address his request for attorney fees. We reverse.

I

Barry Scanlon and Bonnie Witrak, both physicians, dissolved their marriage in 1987 by decree of divorce entered

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in the state of Georgia, where the parties lived during their marriage and Scanlon continues to reside. The decree awarded custody of the parties' two children to Witrak. Scanlon was ordered to pay support of \$350 per child per month until they reached the age of 18, as well as all uninsured medical expenses. Witrak and the

children moved to Washington, where she later remarried.

In 1998, Scanlon petitioned in King County Superior Court to modify his child support, alleging a reduction in his income. He also requested allocation of long distance transportation expenses and an award of the federal income tax exemptions for the children. In response, Witrak requested an increase in support, and payment of postsecondary educational expenses and support until the children were 23 years old.

Witrak conducted no discovery. Upon trial by affidavit, both parties presented the court with little relevant evidence, focusing almost exclusively on mutual accusations of misconduct. A commissioner pro tempore entered an order increasing Scanlon's child support obligation, ordering postsecondary educational support and long distance transportation expenses, and awarding the tax exemptions to Witrak. On Scanlon's motion for revision, the order was affirmed as to transportation expenses and postsecondary educational support, but remanded for entry of findings of fact. After findings were entered, the court denied Scanlon's second motion for revision. He appeals.

II

Scanlon first argues that the court had no authority to grant the relief Witrak requested because she failed to prove a substantial change of circumstances supporting a modification. [1] But Scanlon is the petitioner in this action and once a basis for modification has been established, a court may modify the original order in any respect, which

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includes granting the relief requested by the respondent. [2] Scanlon nevertheless contends that his petition failed to assert a sufficient basis for modification and instead supports only an adjustment. He claims that an adjustment action is narrower in scope than a modification action, thus limiting the relief a trial court can grant. We agree.

RCW 26.09.170 states in relevant part:

[34 P.3d 882]

(1) [T]he provisions of any decree respecting maintenance or support may be modified: ... except as otherwise provided in subsections ... (8) ... of this section, only upon a showing of a substantial change of circumstances.

...

(8) (a) All child support decrees may be adjusted once every twenty-four months based upon changes in the income of the parents without a showing of substantially changed circumstances. Either party may initiate the adjustment by filing a motion and child support worksheets.

(b) A party may petition for modification in cases of substantially changed circumstances under subsection (1) of this section at any time. However, if relief is granted under subsection (1) of this section, twenty-four months must pass Before a motion for an adjustment under (a) of this subsection may be filed.

...

(d) A parent who is receiving transfer payments who receives a wage or salary increase may not bring a modification action pursuant to subsection (1) of this section alleging that increase constitutes a substantial change of circumstances.

When interpreting a statute, we do not construe a statute that is unambiguous, but rather assume that the Legislature means exactly what it says. [3] Plain words do not require construction. [4] The terms in RCW 26.09.170 reflect no ambiguity.

RCW 26.09.170(1) envelopes an adjustment action within the purview of a modification, making

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an adjustment a form of modification. But the statute makes plain by the qualifying circumstances and procedural requirements of each that an adjustment action is more limited in scope. A full modification action is commenced by service of a summons and petition and it is resolved by trial. [5] It may only be sustained under certain prescribed circumstances. [6] In this case, the relevant prerequisite is a substantial change of circumstances. [7] which Washington courts have consistently held is one that was not contemplated at the time the original order of support was entered. [8] A full modification action is significant in nature and anticipates making substantial changes and/or additions to the original order of support.

By contrast, parties may adjust an order of child support every 24 months on a change of incomes, without showing a substantial change in circumstances. [9] This routine action may be effected by filing a motion with the court for a hearing. [10] No summons or trial is necessary. An adjustment action therefore simply conforms existing provisions of a child support order to the parties' current circumstances.

Scanlon alleged in his petition only that more than 24 months had passed and there had been a change in incomes of the parties. He argues that this is insufficient to constitute a substantial change of circumstances.

Indeed, RCW 26.09.170(8)(a) explicitly states that the mere passage of time and routine changes in incomes do not constitute a substantial change in circumstances. But some changes in incomes are such that they will not have been contemplated

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by the parties at the time the previous order of child support was entered and thus a change in incomes could constitute a substantial change of circumstances.

The findings of the commissioner pro tempore, adopted by the revision court, did not address the issue of changed circumstances supporting a modification. Nor did [34 P.3d 883] the revision court enter any findings of fact or conclusions of law regarding changed circumstances to support a modification. This failure requires reversal and remand for entry of findings. [11] but because the record does not support the order of child support in any respect, we provide guidance in our opinion in order to minimize the parties' expense on remand.

In this case, 11 years had passed from the entry of the original decree and Scanlon's petition to modify child support. During that period of time, Witrak's income increased to more than \$270,000 per year. This does not appear to be a routine or ordinary increase in income contemplated by the parties at the time the original decree was entered. Moreover, the record reflects that Witrak has remarried a physician of substantial wealth. Her household assets now exceed \$5 million and her gross annual household income is more than \$800,000. Witrak's remarriage and subsequent accumulation of wealth was also not contemplated at the time the original decree was entered. Thus, this may be a case where a change of incomes does constitute a substantial change of circumstances.

Turning to the provisions of the order itself, Scanlon first argues that the revision court failed to consider all sources of Witrak's income when it calculated her net income for the purposes of child support. We review an order on modification of child support for abuse of discretion, which occurs if the decision is manifestly unreasonable or based on untenable grounds. [12] A court necessarily abuses its discretion if its decision

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is based on an erroneous view of the law. [13] In determining a parent's net income, a court must include, inter alia, wages, overtime, interest and dividend income, and capital gain. [14] The 1997 joint federal income tax return of Bonnie Witrak and her husband evidences taxable interest income of \$26,180, dividend income of \$9,218, and capital gains of \$37,600. [15] Although this income could be the separate income of Witrak's husband and therefore properly excluded from the worksheets, [16] property acquired during a marriage is

presumptively community property, absent clear and convincing evidence to the contrary. [17] Because no evidence in the record rebuts the community property presumption, one-half of this income should be included in the income of Witrak on remand.

Scanlon also contends that the \$250 per month health insurance credit to the mother on the child support worksheets is unsupported by the evidence. In reaching a net child support transfer payment, a parent who pays for health insurance is allowed a credit against his or her basic support obligation equal to the cost of the insurance. [18] This credit may not include any premiums paid by the parent's employer, other third party, or any portion of premium not covering the children at issue. [19] In this case, the only evidence in the record concerning health insurance reflects Witrak's payment of \$15 per month for dental insurance for the children, and 50 cents per pay period for health insurance for Witrak's entire family. On remand, the child

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support worksheets should be corrected to reflect Witrak's actual health insurance payments.

Scanlon next claims that the court's findings of fact do not justify an award of child support in excess of the maximum [34 P.3d 884] amounts set forth on the child support economic table. RCW 26.19.020 sets forth the schedule from which basic child support obligations for dependent children are determined in relation to the parents' combined monthly net incomes. [20] The upper limit of the economic table is a combined monthly net income of \$7,000. [21] 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. [22] In this case, the court determined that the parties' combined monthly net income was \$15,824.36.

Scanlon contends that the revision court should have considered the standards for deviation in determining whether to exceed the economic table. [23] Although RCW 26.19.011(4) defines a deviation as "a child support amount that differs from the standard calculation," [24] which is the child support based on a combined monthly net income up to and including \$5,000. [25] the Appendix to chapter 26.19 RCW modifies this definition by stating, "[i]n general setting support ... [in excess of the economic table] does not constitute a deviation." [26] Moreover, in *In re Marriage of Leslie*, [27] we held that exceeding the maximum amount of support provided by the economic table is not a deviation. Instead, a court may exceed the support provided by the

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schedule "commensurate with the parents' income, resources, and standard of living," and consistent with legislative intent after considering the totality of the

financial circumstances. [28] Other factors to consider are whether the support provides for the basic needs of the dependent child and whether the support is equitably apportioned between the parents. [29] In this case, the commissioner made the following findings of fact relevant to the award of child support:

1. There is no admissible evidence that the petitioner is underemployed.
2. Petitioner/father's business expenses are as shown on his tax returns. These deductions appear reasonable and are consistent throughout the years as reflected on his income tax returns....
3. Evidence Before the court is insufficient to establish that [the mother's] income is non-recurring overtime or one time only income.
4. The parties' net incomes are as shown on the child support worksheets [Scanlon: \$3,195.39/mo; Witrak: \$12,628.97].
5. The petitioner/father does not and has not historically seen his children for even the minimum amount of time contemplated in the statutory child support scheme (i.e. petitioner/father sees his children for less than 91 overnights each year)
6. The respondent/mother has paid for all health insurance for the children, as required by the prior court order, and has voluntarily paid for dental insurance for the children since the divorce, which has decreased the father's obligation to pay for uninsured expenses for the children. The petitioner/father has not yet paid for his share of uninsured medical and dental expenses for the children, though that matter is currently pending.
7. The respondent/mother has paid for all extracurricular activities of the children, such as lessons, since the divorce.

The revision court adopted these findings, but entered no

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additional findings regarding the parties' respective standards of living or the needs of the children.

[34 P.3d 885] Instead, the revision court stated that sufficient competent evidence existed to establish that the father could earn more if he chose to do so. [30] The court made no finding imputing income to Scanlon nor did it disturb the commissioner's finding that Scanlon's net income was \$3,195 per month. The record contains no evidence demonstrating that Scanlon's reduced income was voluntary and done specifically for the purposes of avoiding his child support obligation. [31] Without a clear finding of underemployment and imputation of income, the issue cannot properly be a basis for exceeding the economic tables.

Further, although the court purported to do so, no statutory basis exists to increase a child support obligation based upon the number of overnights per year the children spend with the nonprimary residential parent. A court may reduce an obligor parent's child support obligation if the children reside with that parent for a significant period of time. [32] But the statute neither states nor implies the reverse.

The court also erred in justifying its award on Witrak's historic payment of dental insurance and extracurricular activities. A court must determine support according to the current circumstances of the parties. [33] Moreover, "provisions of any decree respecting ... support may be modified: (a) only as to installments accruing subsequent to the petition for modification or motion for adjustment...." [34] A court may not make a retroactive award of

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support. [35] To increase Scanlon's current support obligation because of expenses he did not and was not ordered to pay in the past is effectively an impermissible retroactive award of support.

In sum, the trial court's findings of fact fail to support an award of support in excess of the economic tables. In addition, the record is devoid of evidence which would allow a court to depart from the economic table. The evidence concerning the parties' respective standards of living show that Witrak's 1997 household after-tax income was \$519,393, or \$43,283 per month. Her declared monthly living expenses were \$34,054.72, leaving a monthly excess income. Before receipt of child support of approximately \$9,228, nearly three times the \$3,195 per month the court found Scanlon's net income to be. In contrast, Scanlon's total declared expenses were \$4,227 per month.

The evidence regarding the children reflects relatively modest needs. They both attend public school. Witrak declared that her clothing expense for four children [36] was \$600 and that "other" unspecified child expenses were \$950 per month. These expenses are not exceptional. Witrak introduced no evidence regarding the children's current extracurricular activities or other special needs.

Generally, when an obligor parent is ordered to pay an amount of support that exceeds the economic table, that parent enjoys substantial wealth in contrast to the obligee parent who lives in comparatively modest circumstances. [37] In those cases, it is appropriate for a court, in considering the standards of living of both parents, to attempt to lessen the disparity between the standard of living of the child and the wealthy parent. But it contravenes legislative intent to increase the child support obligation of an obligor parent of

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moderate means simply because the obligee parent is affluent.

Witrak emphasizes the nominal amount of support Scanlon would otherwise [34 P.3d 886] be ordered to pay if the court did not exceed the guidelines. [38] but she fails to acknowledge that the reason his percentage share is small is because her income is very high. It is only because of Witrak's income that the parties' combined net incomes exceed the economic tables. Child support is designed to meet the needs of the children at issue; its sufficiency is not measured by whether it financially strains the obligor parent. On remand, the trial court should not exceed the child support economic table when calculating the parties' support obligation.

Scanlon next argues that the court erred in ordering an unspecified obligation for the children's postsecondary education and support. [39] A court has the authority to order postmajority support despite the lack of such a provision in the original decree, upon a showing of a substantial change of conditions. [40] In ordering this support, a court must abide by the following statutory requirements:

(1) The child support schedule shall be advisory and not mandatory for postsecondary educational support.

(2) When considering whether to order support for postsecondary educational expenses, the court shall determine whether the child is in fact dependent ... The court shall exercise its discretion when determining whether and for how long to award postsecondary educational support based upon consideration of factors that include but are not limited to the following: Age of the child; the child's needs; the expectations of the parties for their children when the parents were together; the child's prospects, desires, aptitudes, abilities or disabilities; the nature of the postsecondary education sought; and the

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parents' level of education, standard of living, and current and future resources. [41]

In this case, the trial court made no findings of fact addressing the issue of postmajority support, and the record is devoid of any evidence concerning the children's needs, prospects, desires, aptitudes, and nature of the postsecondary education sought. Absent evidence supporting an award of postsecondary educational expenses and support, the order was at best premature.

Scanlon next challenges the court's allocation of long distance transportation expenses, which required that Witrak pay for the children's first visit to Atlanta and Scanlon pay for the next. RCW 26.19.080(3) requires that long distance transportation expenses be shared by the parents in the same proportion as the basic child support obligation. [42] The statute allows no room for a court to

exercise its discretion in this area. [43] On remand, the long distance transportation expenses must be allocated in the same proportion as the basic child support obligation.

Finally, Scanlon appeals the trial court's failure to grant his request for attorney fees. RCW 26.09.140 authorizes a court to award attorney fees after considering both the requesting party's financial need and the other party's ability to pay. [44] A lack of findings as to either need or ability to pay requires reversal. [45] On remand, the court should consider Scanlon's request for fees.

We grant Scanlon's request for fees on appeal. His financial affidavit affirms his modest income, and evidences financial distress by reason of federal tax liens and suspension of service for nonpayment of insurance [34 P.3d 887] premiums, telephone charges, and professional rent. Witrak has not indicated that her ability to pay has changed. We therefore

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refer determination of a reasonable attorney fee award to a commissioner of this court consistent with RAP 18.1.

REVERSED.

ELLINGTON and GROSSE, JJ., concur.

Notes:

- [1] See RCW 26.09.170(1).
- [2] RCW 26.09.170.
- [3] *Davis v. Dept. of Licensing*, 137 Wash.2d 957, 963-64, 977 P.2d 554 (1999).
- [4] *Davis*, 137 Wash.2d at 964, 977 P.2d 554.
- [5] RCW 26.09.175.
- [6] RCW 26.09.170.
- [7] RCW 26.09.170(1).
- [8] See *In re Marriage of Arvey*, 77 Wash.App. 817, 894 P.2d 1346 (1995) (reduction in father's income and mother's re-employment not substantial change of circumstances because the reduced income was not permanent and mother's employment was contemplated at the time decree was entered).
- [9] RCW 26.09.170(8)(a).
- [10] RCW 26.09.170(8)(a).
- [11] CR 52(a)(2)(B); *In re Marriage of Stern*, 68 Wash.App. 922, 926-27, 846 P.2d 1387 (1993).

[12] *In re Marriage of Schumacher*, 100 Wash.App. 208, 211, 997 P.2d 399 (2000).

[13] *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wash.2d 299, 339, 858 P.2d 1054 (1993).

[14] RCW 26.19.071(3).

[15] Witrak's 1995 and 1996 tax returns also reflect dividend and interest income as well as capital gain.

[16] See RCW 26.19.071(4).

[17] RCW 26.16.030; *In re Marriage of Olivares*, 69 Wash.App. 324, 331, 848 P.2d 1281 (1993).

[18] Ch. 26.19 RCW, Appendix, Health Care Expenses.

[19] Ch. 26.19 RCW, Appendix, Health Care Expenses.

[20] Ch. 26.19 RCW, Appendix.

[21] RCW 26.19.020.

[22] RCW 26.19.065(3).

[23] See ch. 26.19 RCW.

[24] RCW 26.19.011(8).

[25] See RCW 26.19.020.

[26] Ch. 26.19 RCW, Appendix, Limitations Standards.

[27] 90 Wash.App. 796, 804, 954 P.2d 330 (1998), *review denied*, 137 Wash.2d 1003, 972 P.2d 466 (1999).

[28] *Leslie*, 90 Wash.App. at 804, 954 P.2d 330; RCW 26.19.001.

[29] RCW 26.19.001.

[30] There is a minute entry in the record stating that Judge Haley determined the salary data offered by Witrak to be authentic, but there is no order in the record admitting it into evidence.

[31] See RCW 26.19.071(6).

[32] Ch. 26.19 RCW, Appendix, Deviation Standards.

[33] See ch. 26.19 RCW, Appendix.

[34] RCW 26.09.170(1).

[35] *In re Marriage of Shoemaker*, 128 Wash.2d 116, 121, 904 P.2d 1150 (1995).

[36] She has two additional children from her current marriage.

[37] See, e.g., *In re Marriage of Leslie*, 90 Wash.App. 796, 954 P.2d 330 (1998); *In re Marriage of Sievers*, 78 Wash.App. 287, 897 P.2d 388 (1995).

[38] Basic child support obligation is allocated between the parents based on each parent's share of the combined monthly net income. RCW 26.19.080(1).

[39] Because we granted Scanlon's motion to extend time for filing the notice of appeal, we reject Witrak's contention that Scanlon's appeal is untimely.

[40] *In re Marriage of Gimlett*, 95 Wash.2d 699, 704, 629 P.2d 450 (1981).

[41] RCW 26.19.090.

[42] *Murphy v. Miller*, 85 Wash.App. 345, 349, 932 P.2d 722 (1997).

[43] *Murphy*, 85 Wash.App. at 349-50, 932 P.2d 722.

[44] *In re Marriage of Shellenberger*, 80 Wash.App. 71, 87, 906 P.2d 968 (1995).

[45] *In re Marriage of Steadman*, 63 Wash.App. 523, 529, 821 P.2d 59 (1991).

WASHINGTON STATE CHILD SUPPORT SCHEDULE

Including:

- Definitions and Standards
- Instructions
- Economic Table
- Worksheets

Effective Dates:

| | |
|-------------------------|-----------------|
| Definitions & Standards | June 10, 2010 |
| Instructions - only | August 26, 2013 |
| Economic Table | October 1, 2009 |
| Worksheets | July 28, 2013 |
| Worksheets – RDP | July 28, 2013 |



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WASHINGTON STATE CHILD SUPPORT SCHEDULE

DEFINITIONS AND STANDARDS

Definitions

Unless the context clearly requires otherwise, these definitions apply to the standards following this section. RCW 26.19.011.

Basic child support obligation: means the monthly child support obligation determined from the economic table based on the parties' combined monthly net income and the number of children for whom support is owed.

Child support schedule: means the standards, economic table, worksheets and instructions, as defined in chapter 26.19 RCW.

Court: means a superior court judge, court commissioner, and presiding and reviewing officers who administratively determine or enforce child support orders.

Deviation: means a child support amount that differs from the standard calculation.

Economic table: means the child support table for the basic support obligation provided in RCW 26.19.020.

Instructions: means the instructions developed by the Administrative Office of the Courts pursuant to RCW 26.19.050 for use in completing the worksheets.

Standards: means the standards for determination of child support as provided in chapter 26.19 RCW.

Standard calculation: means the presumptive amount of child support owed as determined from the child support schedule before the court considers any reasons for deviation.

Support transfer payment: means the amount of money the court orders one parent to pay to another parent or custodian for child support after determination of the standard calculation and deviations. If certain expenses or credits are expected to fluctuate and the order states a formula or percentage to determine the additional amount or credit on an ongoing basis, the term "support transfer payment" does not mean the additional amount or credit.

Worksheets: means the forms developed by the Administrative Office of the Courts pursuant to RCW 26.19.050 for use in determining the amount of child support.

Application Standards

1. Application of the support schedule: The child support schedule shall be applied:
 - a. in each county of the state;
 - b. in judicial and administrative proceedings under titles 13, 26 and 74 RCW;
 - c. in all proceedings in which child support is determined or modified;
 - d. in setting temporary and permanent support;
 - e. in automatic modification provisions or decrees entered pursuant to RCW 26.09.100; and
 - f. in addition to proceedings in which child support is

determined for minors, to adult children who are dependent on their parents and for whom support is ordered pursuant to RCW 26.09.100.

The provisions of RCW 26.19 for determining child support and reasons for deviation from the standard calculation shall be applied in the same manner by the court, presiding officers and reviewing officers. RCW 26.19.035(1).

2. Written findings of fact supported by the evidence: An order for child support shall be supported by written findings of fact upon which the support determination is based and shall include reasons for any deviation from the standard calculation and reasons for denial of a party's request for deviation from the standard calculation. RCW 26.19.035(2).
3. Completion of worksheets: Worksheets in the form developed by the Administrative Office of the Courts shall be completed under penalty of perjury and filed in every proceeding in which child support is determined. The court shall not accept incomplete worksheets or worksheets that vary from the worksheets developed by the Administrative Office of the Courts. RCW 26.19.035(3).
4. Court review of the worksheets and order: The court shall review the worksheets and the order setting child support for the adequacy of the reasons set forth for any deviation or denial of any request for deviation and for the adequacy of the amount of support ordered. Each order shall state the amount of child support calculated using the standard calculation and the amount of child support actually ordered. Worksheets shall be attached to the decree or order or if filed separately, shall be initialed or signed by the judge and filed with the order. RCW 26.19.035(4).

Income Standards

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. RCW 26.19.071(1).
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. RCW 26.19.071(2).
3. Income sources included in gross monthly income: Monthly gross income shall include income from any source, including: salaries; wages; commissions; deferred compensation; overtime, except as excluded from income in RCW 26.19.071(4)(h); contract-related benefits; income from second jobs except as excluded from income in RCW 26.19.071(4)(h); dividends; interest; trust income; severance pay; annuities; capital gains; pension retirement benefits; workers' compensation; unemployment benefits; maintenance actually received; bonuses; social security benefits; disability insurance benefits;

and income from self-employment, rent, royalties, contracts, proprietorship of a business, or joint ownership of a partnership or closely held corporation. RCW 26.19.071(3).

Veterans' disability pensions: Veterans' disability pensions or regular compensation for disability incurred in or aggravated by service in the United States armed forces paid by the Veterans' Administration shall be disclosed to the court. The court may consider either type of compensation as disposable income for purposes of calculating the child support obligation. See RCW 26.19.045.

4. Income sources excluded from gross monthly income: The following income and resources shall be disclosed but shall not be included in gross income: income of a new spouse or domestic partner or income of other adults in the household; child support received from other relationships; gifts and prizes; temporary assistance for needy families; Supplemental Security Income; general assistance; food stamps; and 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. RCW 26.19.071(4).

VA aid and attendant care: Aid and attendant care payments to prevent hospitalization paid by the Veterans Administration solely to provide physical home care for a disabled veteran, and special compensation paid under 38 U.S.C. Sec. 314(k) through (r) to provide either special care or special aids, or both to assist with routine daily functions shall be disclosed. The court may not include either aid or attendant care or special medical compensation payments in gross income for purposes of calculating the child support obligation or for purposes of deviating from the standard calculation. See RCW 26.19.045.

Other aid and attendant care: Payments from any source, other than veterans' aid and attendance allowance or special medical compensation paid under 38 U.S.C. Sec. 314(k) through (r) for services provided by an attendant in case of a disability when the disability necessitates the hiring of the services or an attendant shall be disclosed but shall not be included in gross income and shall not be a reason to deviate from the standard calculation. RCW 26.19.055.

5. Determination of net income: The following expenses shall be disclosed and deducted from gross monthly income to calculate net monthly income: federal and state income taxes (see the following paragraph); federal insurance contributions act deductions (FICA); mandatory pension plan payments; mandatory union or professional dues; state industrial insurance premiums; court-ordered maintenance to the extent actually paid; 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 normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about

which there is a disagreement. Items deducted from gross income shall not be a reason to deviate from the standard calculation. RCW 26.19.071(5).

Allocation of tax exemptions: The parties may agree which parent is entitled to claim the child or children as dependents for federal income tax exemptions. The court may award the exemption or exemptions and order a party to sign the federal income tax dependency exemption waiver. The court may divide the exemptions between the parties, alternate the exemptions between the parties or both. RCW 26.19.100.

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. (See "Approximate Median Net Monthly Income" table on page 6.)RCW 26.19.071(6).

Allocation Standards

1. Basic child support: The basic child support obligation derived from the economic table shall be allocated between the parents based on each parent's share of the combined monthly net income. RCW 26.19.080(1).
2. Health care expenses: Health care costs are not included in the economic table. Monthly health care costs shall be shared by the parents in the same proportion as the basic support obligation. Health care costs shall include, but not be limited to, medical,

dental, orthodontia, vision, chiropractic, mental health treatment, prescription medications, and other similar costs for care and treatment. RCW 26.19.080(2).

3. Day care and special child rearing expenses: Day care and special child rearing expenses, such as tuition and long distance transportation costs to and from the parents for visitation purposes, are not included in the economic table. These expenses shall be shared by the parents in the same proportion as the basic child support obligation. RCW 26.19.080(3).
4. The court may exercise its discretion to determine the necessity for and the reasonableness of all amounts ordered in excess of the basic child support obligation. RCW 26.19.080(4).

Limitations Standards

1. Limit at 45 percent of a parent's net income: Neither parent's child support obligation owed for all his or her biological or legal children may exceed 45 percent of net income except for good cause shown.
 - a. Each child is entitled to a pro rata share of the income available for support, but the court only applies the pro rata share to the children in the case before the court.
 - b. Before determining whether to apply the 45 percent limitation, the court must consider the best interests of the child(ren) and the circumstances of each parent. Such circumstances include, but are not limited to, leaving insufficient funds in the custodial parent's household to meet the basic needs of the child(ren), comparative hardship to the affected households, assets or liabilities, and any involuntary limits on either parent's earning capacity including incarceration, disabilities, or incapacity.
 - c. Good cause includes, but is not limited to, possession of substantial wealth, child(ren) with day care expenses, special medical need, educational need, psychological need, and larger families. RCW 26.19.065(1).
2. Presumptive minimum support obligation: When a parent's monthly net income is below 125% of the federal poverty guideline, a support order of not less than fifty dollars per child per month shall be entered unless the obligor parent establishes that it would be unjust to do so in that particular case. The decision whether there is a sufficient basis to go below the presumptive minimum payment must take into consideration the best interests of the child(ren) and circumstances of each parent. Such circumstances can include leaving insufficient funds in the custodial parent's household to meet the basic needs of the child(ren), comparative hardship to the affected households, assets or liabilities, and earning capacity. RCW 26.19.065(2)(a).
3. Self-support reserve: The basic support obligation of the parent making the transfer payment, excluding health care, day care, and special child-rearing expenses, shall not reduce his or her net income below the self-support reserve of 125% of the federal poverty level, except for the presumptive minimum payment of fifty dollars per child per month or when it would be unjust to apply the self-support reserve limitation after considering the best interests of the child(ren) and the circumstances of each parent. Such circumstances include, but are not limited to,

leaving insufficient funds in the custodial parent's household to meet the basic needs of the child(ren), comparative hardship to the affected households, assets or liabilities, and earning capacity. This section shall not be construed to require monthly substantiation of income. (See the Self-Support Reserve memorandum on the courts' website www.courts.wa.gov/forms and at www.WashingtonLawHelp.org.) RCW 26.19.065(2)(b).

4. Income above twelve thousand dollars: The economic table is presumptive for combined monthly net incomes up to and including twelve thousand dollars. When combined monthly net income exceeds twelve thousand dollars, the court may exceed the maximum presumptive amount of support upon written findings of fact. RCW 26.19.065(3).

Deviation Standards

1. Reasons for deviation from the standard calculation include but are not limited to the following:
 - a. Sources of income and tax planning: The court may deviate from the standard calculation after consideration of the following:
 - i. Income of a new spouse or new domestic partner if the parent who is married to the new spouse or the parent who is in a domestic partnership with the new domestic partner is asking for a deviation based on any other reason. Income of a new spouse or domestic partner is not, by itself, a sufficient reason for deviation;
 - ii. Income of other adults in the household if the parent who is living with the other adult is asking for a deviation based on any other reason. Income of the other adults in the household is not, by itself, a sufficient reason for deviation;
 - iii. Child support actually received from other relationships;
 - iv. Gifts;
 - v. Prizes;
 - vi. Possession of wealth, including but not limited to savings, investments, real estate holdings and business interests, vehicles, boats, pensions, bank accounts, insurance plans or other assets;
 - vii. Extraordinary income of a child; or
 - viii. Tax planning considerations. A deviation for tax planning may be granted only if child(ren) would not receive a lesser economic benefit due to the tax planning;
 - ix. Income that has been excluded under RCW 26.19.071(4)(h) if the person earning that income asks for a deviation for any other reason. RCW 26.19.075(1)(a)
 - b. Nonrecurring income: The court may deviate from the standard calculation based on a finding that a particular source of income included in the calculation of the basic support obligation is not a recurring source of income. Depending on the circumstances, nonrecurring income may include overtime, contract-related benefits, bonuses or income from second jobs. Deviations for nonrecurring income shall be based on a review of the nonrecurring income received in the previous two calendar years. RCW 26.19.075(1)(b).

- c. **Debt and high expenses:** The court may deviate from the standard calculation after consideration of the following expenses:
- i. Extraordinary debt not voluntarily incurred;
 - ii. A significant disparity in the living costs of the parents due to conditions beyond their control;
 - iii. Special needs of disabled child(ren); or
 - iv. Special medical, educational or psychological needs of the child(ren).
 - v. Costs anticipated to be incurred by the parents in compliance with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child. RCW 26.19.075(1)(c).
- d. **Residential schedule:** The court may deviate from the standard calculation if the child(ren) spend(s) a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving temporary assistance for needy families. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment. RCW 26.19.075(1)(d).
- e. **Children from other relationships:** The court may deviate from the standard calculation when either or both of the parents before the court have children from other relationships to whom the parent owes a duty of support.
- i. The child support schedule shall be applied to the parents and children of the family before the court to determine the presumptive amount of support.
 - ii. Children from other relationships shall not be counted in the number of children for purposes of determining the basic support obligation and the standard calculation.
 - iii. When considering a deviation from the standard calculation for children from other relationships, the court may consider only other children to whom the parent owes a duty of support. The court may consider court-ordered payments of child support for children from other relationships only to the extent that the support is actually paid.
 - iv. When the court has determined that either or both parents have children from other relationships, deviations under this section shall be based on consideration of the total circumstances of both households. All child support obligations paid, received, and owed for all children shall be disclosed and considered. RCW 26.19.075(1)(e).
2. All income and resources of the parties before the court, new spouses or domestic partners, and other adults in the household shall be disclosed and considered as provided. The presumptive amount of support shall be determined according to the child support schedule. Unless specific reasons for deviation are set forth in the written findings of fact and are supported by the evidence, the court shall order each parent to pay the amount of support determined by using the standard calculation. RCW 26.19.075(2).
3. The court shall enter findings that specify reasons for any deviation or any denial of a party's request for any deviation from the standard calculation made by the court. The court shall not consider reasons for deviation until the court determines the standard calculation for each parent. RCW 26.19.075(3).
4. When reasons exist for deviation, the court shall exercise discretion in considering the extent to which the factors would affect the support obligation. RCW 26.19.075(4).
5. Agreement of the parties is not by itself adequate reason for any deviations from the standard calculations. RCW 26.19.075(5).

Post-Secondary Education Standards

1. The child support schedule shall be advisory and not mandatory for post-secondary educational support. RCW 26.19.090(1)
2. When considering whether to order support for post-secondary educational expenses, the court shall determine whether the child is in fact dependent and is relying upon the parents for the reasonable necessities of life. The court shall exercise its discretion when determining whether and for how long to award post-secondary educational support based upon consideration of factors that include but are not limited to the following: age of the child; the child's needs; the expectations of the parties for their child(ren) when the parents were together; the child(ren)'s prospects, desires, aptitudes, abilities or disabilities; the nature of the post-secondary education sought and the parent's level of education, standard of living and current and future resources. Also to be considered are the amount and type of support that the child would have been afforded if the parents had stayed together. RCW 26.19.090(2).
3. The child must enroll in an accredited academic or vocational school, must be actively pursuing a course of study commensurate with the child's vocational goals and must be in good academic standing as defined by the institution. The court-ordered post-secondary educational support shall be automatically suspended during the period or periods the child fails to comply with these conditions. RCW 26.19.090(3).
4. The child shall also make available all academic records and grades to both parents as a condition of receiving post-secondary educational support. Each parent shall have full and equal access to the post-secondary education records as provided by statute (RCW 26.09.225). RCW 26.19.090(4).
5. The court shall not order the payment of post-secondary educational expenses beyond the child's twenty-third birthday, except for exceptional circumstances, such as mental, physical or emotional disabilities. RCW 26.19.090(5).
6. The court shall direct that either or both parents' payments for post-secondary educational expenses are made directly to the educational institution if feasible. If direct payments are not feasible, then the court in its discretion may order that either or both parents' payments are made directly to the child if the child does not reside with either parent. If the child resides with one of the parents, the court may direct that the parent making the support transfer payments make the payments to the child or to the parent who has been receiving the support transfer payments. RCW 26.19.090(6).

WASHINGTON STATE CHILD SUPPORT SCHEDULE INSTRUCTIONS FOR WORKSHEETS

Worksheets:

Fill in the names and ages of only those children whose support is at issue.

Part I: Income

Pursuant to INCOME STANDARD #1: Consideration of all income, "only the income of the parents of the child(ren) whose support is at issue shall be calculated for purposes of calculating the basic support obligation." (See page 1.)

Pursuant to INCOME STANDARD #2: Verification of income, "tax returns for the preceding two years and current paystubs are required for income verification purposes. Other sufficient verification shall be required for income and deductions which do not appear on tax returns or paystubs." (See page 1.)

Gross Monthly Income

Gross monthly income is defined under INCOME STANDARD #3: Income sources included in gross monthly income. (See page 1.)

Income exclusions are defined under INCOME STANDARD #4: Income sources excluded from gross monthly income. (See page 2.) Excluded income must be disclosed and listed in Part VIII of the worksheets.

Monthly Average of Income:

- If income varies during the year, divide the annual total of the income by 12.
- If paid weekly, multiply the weekly income by 52 and divide by 12.
- If paid every other week, multiply the two-week income by 26 and divide by 12.
- If paid twice a month (bi-monthly), multiply the bi-monthly income by 24 and divide by 12.

LINE 1a, Wages and Salaries: Enter the average monthly total of all salaries, wages, contract-related benefits, bonuses, and income from overtime and second jobs that is not excluded from income by RCW 26.19.071(4)(h).

LINE 1b, Interest and Dividend Income: Enter the average monthly total of dividends and interest income.

LINE 1c, Business Income: Enter the average monthly income from self-employment, rent, royalties, contracts, proprietorship of a business, or joint ownership of a partnership or closely held corporation.

LINE 1d, Maintenance Received: Enter the monthly amount of maintenance actually received.

LINE 1e, Other Income: Enter the average monthly total of other income. (Other income includes, but is not limited to: trust income, severance pay, annuities, capital gains, pension retirement benefits, workers compensation, unemployment benefits, social security benefits and disability insurance benefits.)

LINE 1f, Imputed Income: Enter the imputed gross monthly income for a parent who is voluntarily unemployed, underemployed or if you do not have records of a parent's actual earnings. Refer to "INCOME STANDARD #6: Imputation of income." (See page 2.) Impute income using the first method possible based on the information you have in the following order:

Calculate full-time earnings using either:

1. Current rate of pay;
2. Historical rate of pay based on reliable information;
3. Past rate of pay, if current information is incomplete or sporadic; or
4. Minimum wage where the parent lives when the parent has a history of minimum wage or government assistance is recently released from incarceration or is a high school student.

Historical rate of pay information may be available from the Division of Child Support. Use form 18-701: "Request for Income Information for Purposes of Entering a Child Support Order", available online at: <http://www.dshs.wa.gov/dcs/Resources/Forms.asp>

If you impute income using one of the four methods, above, enter the amount in line 1f. Also, in line 26 of the Worksheets, explain which method you used to impute income and how you calculated the amount of imputed income.

If you cannot use any of the above methods, impute the parent's net monthly income using the table below, and enter the appropriate amount for the parent's age and gender **on line 1f and on line 3**. The table, below, shows net income, after deductions. So if you impute using this table, you will not enter any deductions on the worksheet under line 2. Leave lines 2a through 2i blank. For this parent, go to line 4. Also, in line 26 of the Worksheets, explain that net income was imputed using the Approximate Median Net Monthly Income Table.

Approximate Median Net Monthly Income

| MALE | age | FEMALE |
|---------|-------|---------|
| \$1,832 | 15-24 | \$1,632 |
| \$2,804 | 25-34 | \$2,446 |
| \$3,448 | 35-44 | \$2,693 |
| \$3,569 | 45-54 | \$2,714 |
| \$3,735 | 55-64 | \$2,814 |
| \$4,084 | 65 + | \$2,960 |

U.S. Census Bureau, Current Population Survey, 2009 Annual Social and Economic Supplement, Table PINC-01. Selected Characteristics of People 15 Years Old and Over by Total Money Income in 2008, Work Experience in 2008, Race, Hispanic Origin, and Sex, Worked Full Time, Year Round.

[Net income has been determined by subtracting FICA (7.65 percent) and the tax liability for a single person (one withholding allowance).]

LINE 1g, Total Gross Monthly Income: Add the monthly income amounts for each parent (lines 1a through 1f) and enter the totals on line 1g.

Monthly Deductions from Gross Income

Allowable monthly deductions from gross income are defined under INCOME STANDARD #5: Determination of net income. (See page 2.)

Monthly Average of Deductions: If a deduction is annual or varies during the year, divide the annual total of the deduction by 12 to determine a monthly amount.

LINE 2a, Income Taxes: Enter the monthly amount actually owed for state and federal income taxes. (The amount of income tax withheld on a paycheck may not be the actual amount of income tax owed due to tax refund, etc. It is appropriate to consider tax returns from prior years as indicating the actual amount of income tax owed if income has not changed.)

LINE 2b, FICA/Self Employment Taxes: Enter the total monthly amount of FICA, Social Security, Medicare and Self-employment taxes owed.

LINE 2c, State Industrial Insurance Deductions: Enter the monthly amount of state industrial insurance deductions.

LINE 2d, Mandatory Union/Professional Dues: Enter the monthly cost of mandatory union or professional dues.

LINE 2e, Mandatory Pension Plan Payments: Enter the monthly cost of mandatory pension plan payments amount.

LINE 2f, Voluntary Retirement Contributions: Enter the monthly cost of voluntary Retirement Contributions. Divide the amount of the voluntary retirement contribution, up to \$5,000 per year, by 12 to calculate the monthly cost. (For more information regarding limitations on the allowable deduction of voluntary retirement contributions, refer to INCOME STANDARD #5: Determination of net income. See page 2.)

LINE 2g, Maintenance Paid: Enter the monthly amount of maintenance actually paid pursuant to a court order.

LINE 2h, Normal Business Expenses: If self-employed, enter the amount of normal business expenses. (Pursuant to INCOME STANDARD #5: Determination of net income, "justification shall be required for any business expense deduction about which there is a disagreement." See page 2.)

LINE 2i, Total Deductions From Gross Income: Add the monthly deductions for each parent (lines 2a through 2h) and enter the totals on line 2i.

LINE 3, Monthly Net Income: For each parent, subtract total deductions (line 2i) from total gross monthly income (line 1g) and enter these amounts on line 3.

LINE 4, Combined Monthly Net Income: Add the parents' monthly net incomes (line 3) and enter the total on line 4.

LINE 5, Basic Child Support Obligation: In the work area provided on line 5, enter the basic support obligation amount determined for each child. Add these amounts together and enter the total in the box on line 5. (To determine a per child basic support obligation, see the following economic table instructions.)

Economic Table Instructions

To use the Economic Table to determine an individual support amount for each child:

- Locate in the left-hand column the combined monthly net income amount closest to the amount entered on line 4 of Worksheet (round up when the combined monthly net income falls halfway between the two amounts in the left-hand column);
- Locate on the top row the family size for the number of children for whom child support is being determined (when determining family size for the required worksheets, do not include child(ren) from other relationships); and
- circle the two numbers in the columns listed below the family size that are across from the net income. The amount in the "A" column is the basic support amount for a child up to age 11. The amount in the "B" column is the basic support amount for a child 12 years of age or older.

LINE 6, Proportional Share of Income: Divide the monthly net income for each parent (line 3) by the combined monthly net income (line 4) and enter these amounts on line 6. (The entries on line 6 when added together should equal 1.00.)

Part II: Basic Child Support Obligation

LINE 7, Each Parent's Basic Child Support Obligation without consideration of low income limitations: Multiply the total basic child support obligation (amount in box on line 5) by the income share proportion for each parent (line 6) and enter these amounts on line 7. (The amounts entered on line 7 added together should equal the amount entered on line 5.)

LINE 8, Calculating low income limitations: Fill in only those that apply:

To calculate the low-income limitation standards in lines 8b and 8c, you will need to know the self-support reserve amount, which is 125 % of the current federal poverty guideline. As of January 20, 2011, self-support reserve is \$1,134. The guideline and self-support reserve change roughly annually. To check the current self-support reserve amount go to the courts' web site at: www.courts.wa.gov, or go to www.WashingtonLawHelp.org. Enter the self-support reserve amount in the space provided in line 8. (For more information, see Limitation Standard #2 on page 3 of the Definitions and Standards.)

8a. Is combined net income less than \$1,000? If combined net monthly income on line 4 is less than \$1,000, enter each parent's presumptive support obligation of \$50 per child. Do not enter an amount on line 8a if combined income on line 4 is more than \$1,000.

8b. Is monthly net income less than self-support reserve? For each parent whose monthly net income on line 3 is less than the self support reserve, enter the parent's presumptive support obligation of \$50 per child. Do not use this box for a parent whose net income on line 3 is greater than the self-support reserve.

8c. Is monthly net income equal to or more than self-support reserve? Subtract the self-support reserve from line 3 and enter this amount or enter \$50 per child whichever is greater. Do not use this box if the amount is greater than the amount in line 7.

LINE 9, Each parent's basic child support obligation after calculating applicable limitations: For each parent, enter the lowest amount from line 7, 8a – 8c, but not less than the presumptive \$50 per child.

Part III: Health Care, Day Care, and Special Child Rearing Expenses

Pursuant to ALLOCATION STANDARD #4: "the court may exercise its discretion to determine the necessity for and the reasonableness of all amounts ordered in excess of the basic child support obligation." (See page 2.)

Pursuant to ALLOCATION STANDARD #2: Health care expenses and #3: Day care and special child rearing expenses, health care, day care, and special child rearing expenses shall be shared by the parents in the same proportion as the basic support obligation. (See page 2.) NOTE: The court order should reflect that health care, day care and special child rearing expenses not listed should be apportioned by the same percentage as the basic child support obligation.

Monthly Average of Expenses: If a health care, day care, or special child rearing expense is annual or varies during the year, divide the annual total of the expense by 12 to determine a monthly amount.

Health Care Expenses

LINE 10a, Monthly Health Insurance Premiums Paid For Child(ren): List the monthly amount paid by each parent for health care insurance for the child(ren) of the relationship. (When determining an insurance premium amount, do not include the portion of the premium paid by an employer or other third party and/or the portion of the premium that covers the parent or other household members.)

LINE 10b, Uninsured Monthly Health Care Expenses Paid For Child(ren): List the monthly amount paid by each parent for the child(ren)'s health care expenses not reimbursed by insurance.

LINE 10c, Total Monthly Health Care Expenses: For each parent add the health insurance premium payments (line 10a) to the uninsured health care payments (line 10b) and enter these amounts on line 10c.

LINE 10d, Combined Monthly Health Care Expenses: Add the parents' total health care payments (line 10c) and enter this amount on line 10d.

Day Care and Special Expenses

LINE 11a, Day Care Expenses: Enter average monthly day care costs.

LINE 11b, Education Expenses: Enter the average monthly costs of tuition and other related educational expenses.

LINE 11c, Long Distance Transportation Expenses: Enter the average monthly costs of long distance travel incurred pursuant to the residential or visitation schedule.

LINE 11d, Other Special Expenses: Identify any other special expenses and enter the average monthly cost of each.

LINE 11e, Total Day Care and Special Expenses: Add the monthly expenses for each parent (lines 11a through 11d) and enter these totals on line 11e.

LINE 12, Combined Monthly Total of Day Care and Special Expenses: Add the parents' total expenses (line 11e) and enter this total on line 12.

LINE 13, Total Health Care, Day Care and Special Expenses: Add the health care expenses (line 10d) to the combined monthly total of day care and special expenses (line 12) and enter this amount on line 13.

LINE 14, Each Parent's Obligation For Health Care, Day Care And Special Expenses: Multiply the total health care, day care, and special expense amount (line 13) by the income proportion for each parent (line 6) and enter these amounts on line 14.

LINE 15, Gross Child Support Obligation: For each parent, add the basic child support obligation (line 9) to the obligation for extraordinary health care, day care and special expenses (line 14). Enter these amounts on line 15.

Part V: Child Support Credits

Child support credits are provided in cases where parents make direct payments to third parties for the cost of goods and services which are included in the standard calculation support obligation (e.g., payments to an insurance company or a day care provider).

LINE 16a, Monthly Health Care Expenses Credit: Enter the total monthly health care expenses amounts from line 10c for each parent.

LINE 16b, Day Care And Special Expenses Credit: Enter the total day care and special expenses amounts from line 11e for each parent.

LINE 16c, Other Ordinary Expense Credit: If approval of another ordinary expense credit is being requested, in the space provided, specify the expense and enter the average monthly cost in the column of the parent to receive the credit. (It is generally assumed that ordinary expenses are paid in accordance with the child(ren)'s residence. If payment of a specific ordinary expense does not follow this assumption, the parent paying for this expense may request approval of an ordinary expense credit. This credit is discretionary with the court.)

LINE 16d, Total Support Credits: For each parent, add the entries on lines 16 a through c and enter the totals on line 16d.

Part VI: Standard Calculation/Presumptive Transfer Payment

LINE 17, For Each Parent: subtract the total support credits (line 16d) from the gross child support obligation (line 15) and enter the resulting amounts on line 17. If the amount is less than \$50 per child for either parent, then enter the presumptive minimum support obligation of \$50 per child, instead of the lower amount.

Part VII: Additional Informational Calculations

LINE 18, 45% of Each Parent's Net Income From Line 3: For each parent, multiply line 3 by .45. Refer to LIMITATIONS Standards #1: Limit at 45% of a parent's net income.

LINE 19, 25% of Each Parent's Basic Support Obligation from Line 9: For each parent, multiply line 9 by .25.

Part VIII: Additional Factors for Consideration

Pursuant to INCOME STANDARD #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." (See page 1.)

LINE 20 a-h, Household Assets: Enter the estimated present value of assets of the household.

LINE 21, Household Debt: Describe and enter the amount of liens against assets owned by the household and/or any extraordinary debt.

Other Household Income

LINE 22a, Income of Current Spouse or Domestic Partner: If a parent is currently married to or in a domestic partnership with someone other than the parent of the child(ren) for whom support is being determined, list the name and enter the income of the present spouse or domestic partner.

LINE 22b, Income of Other Adults In The Household: List the names and enter the incomes of other adults residing in the household.

LINE 22c, Gross income from overtime or from second jobs the party is asking the court to exclude per INCOME STANDARD #4, Income sources excluded from gross monthly income (see page 2).

LINE 22d, Income of Children: If the amount is considered to be extraordinary, list the name and enter the income of children residing in the home.

LINE 22c, Income from Child Support: List the name of the child(ren) for whom support is received and enter the amount of the support income. Do not include the child(ren) for whom support is being determined.

LINE 22f, Income from Assistance Programs: List the program and enter the amount of any income received from assistance programs. (Assistance programs include, but are not limited to: temporary assistance for needy families, SSI, general assistance, food stamps and aid and attendance allowances.)

LINE 22g, Other Income: Describe and enter the amount of any other income of the household. (Include income from gifts and prizes on this line.)

LINE 23, Nonrecurring Income: Describe and enter the amount of any income included in the calculation of gross income (LINE 1g) which is nonrecurring. (Pursuant to DEVIATION STANDARD #1b: Nonrecurring income, "depending on the circumstances, nonrecurring income may include overtime, contract-related benefits, bonuses or income from second jobs." See page 3.)

LINE 24, Child Support Owed, Monthly, for Biological or Legal Child(ren): List the names and ages and enter the amount of child support owed for other children, (not the children for whom support is being determined). Is the support paid? Check Yes or No.

LINE 25, Other Child(ren) Living in Each Household: List the names and ages of children, other than those for whom support is being determined, who are living in each household.

LINE 26, Other Factors For Consideration: In the space provided list any other factors that should be considered in determining the child support obligation. (For information regarding other factors for consideration, refer to DEVIATION STANDARDS. See page 3.) Also use this space to explain how you calculated the income and deductions in lines 1 and 2.

Nonparental Custody Cases: When the children do not reside with either parent, the household income and resources of the children's custodian(s) should be listed on line 26.

**WASHINGTON STATE CHILD SUPPORT SCHEDULE
ECONOMIC TABLE**

MONTHLY BASIC SUPPORT OBLIGATION PER CHILD

(KEY: A = AGE 0-11 B = AGE 12-18)

| Combined Monthly Net Income | One Child Family | | Two Children Family | | Three Children Family | | Four Children Family | | Five Children Family | |
|--|------------------|------|---------------------|------|-----------------------|-----|----------------------|-----|----------------------|-----|
| | A | B | A | B | A | B | A | B | A | B |
| For income less than \$1,000, the obligation is based upon the resources and living expenses of each household. Minimum support shall not be less than \$50 per child per month except when allowed by RCW 26.19.065(2). | | | | | | | | | | |
| 1000 | 220 | 272 | 171 | 211 | 143 | 177 | 121 | 149 | 105 | 130 |
| 1100 | 242 | 299 | 188 | 232 | 157 | 194 | 133 | 164 | 116 | 143 |
| 1200 | 264 | 326 | 205 | 253 | 171 | 211 | 144 | 179 | 126 | 156 |
| 1300 | 285 | 352 | 221 | 274 | 185 | 228 | 156 | 193 | 136 | 168 |
| 1400 | 307 | 379 | 238 | 294 | 199 | 246 | 168 | 208 | 147 | 181 |
| 1500 | 327 | 404 | 254 | 313 | 212 | 262 | 179 | 221 | 156 | 193 |
| 1600 | 347 | 428 | 269 | 333 | 225 | 278 | 190 | 235 | 166 | 205 |
| 1700 | 367 | 453 | 285 | 352 | 238 | 294 | 201 | 248 | 175 | 217 |
| 1800 | 387 | 478 | 300 | 371 | 251 | 310 | 212 | 262 | 185 | 228 |
| 1900 | 407 | 503 | 316 | 390 | 264 | 326 | 223 | 275 | 194 | 240 |
| 2000 | 427 | 527 | 331 | 409 | 277 | 342 | 234 | 289 | 204 | 252 |
| 2100 | 447 | 552 | 347 | 429 | 289 | 358 | 245 | 303 | 213 | 264 |
| 2200 | 467 | 577 | 362 | 448 | 302 | 374 | 256 | 316 | 223 | 276 |
| 2300 | 487 | 601 | 378 | 467 | 315 | 390 | 267 | 330 | 233 | 288 |
| 2400 | 506 | 626 | 393 | 486 | 328 | 406 | 278 | 343 | 242 | 299 |
| 2500 | 526 | 650 | 408 | 505 | 341 | 421 | 288 | 356 | 251 | 311 |
| 2600 | 534 | 661 | 416 | 513 | 346 | 428 | 293 | 362 | 256 | 316 |
| 2700 | 542 | 670 | 421 | 520 | 351 | 435 | 298 | 368 | 259 | 321 |
| 2800 | 549 | 679 | 427 | 527 | 356 | 440 | 301 | 372 | 262 | 324 |
| 2900 | 556 | 686 | 431 | 533 | 360 | 445 | 305 | 376 | 266 | 328 |
| 3000 | 561 | 693 | 436 | 538 | 364 | 449 | 308 | 380 | 268 | 331 |
| 3100 | 566 | 699 | 439 | 543 | 367 | 453 | 310 | 383 | 270 | 334 |
| 3200 | 569 | 704 | 442 | 546 | 369 | 457 | 312 | 386 | 272 | 336 |
| 3300 | 573 | 708 | 445 | 549 | 371 | 459 | 314 | 388 | 273 | 339 |
| 3400 | 574 | 710 | 446 | 551 | 372 | 460 | 315 | 389 | 274 | 340 |
| 3500 | 575 | 711 | 447 | 552 | 373 | 461 | 316 | 390 | 275 | 341 |
| 3600 | 577 | 712 | 448 | 553 | 374 | 462 | 317 | 391 | 276 | 342 |
| 3700 | 578 | 713 | 449 | 554 | 375 | 463 | 318 | 392 | 277 | 343 |
| 3800 | 581 | 719 | 452 | 558 | 377 | 466 | 319 | 394 | 278 | 344 |
| 3900 | 596 | 736 | 463 | 572 | 386 | 477 | 326 | 404 | 284 | 352 |
| 4000 | 609 | 753 | 473 | 584 | 395 | 488 | 334 | 413 | 291 | 360 |
| 4100 | 623 | 770 | 484 | 598 | 404 | 500 | 341 | 422 | 298 | 368 |
| 4200 | 638 | 788 | 495 | 611 | 413 | 511 | 350 | 431 | 305 | 377 |
| 4300 | 651 | 805 | 506 | 625 | 422 | 522 | 357 | 441 | 311 | 385 |
| 4400 | 664 | 821 | 516 | 637 | 431 | 532 | 364 | 449 | 317 | 392 |
| 4500 | 677 | 836 | 525 | 649 | 438 | 542 | 371 | 458 | 323 | 400 |
| 4600 | 689 | 851 | 535 | 661 | 446 | 552 | 377 | 467 | 329 | 407 |
| 4700 | 701 | 866 | 545 | 673 | 455 | 562 | 384 | 475 | 335 | 414 |
| 4800 | 713 | 882 | 554 | 685 | 463 | 572 | 391 | 483 | 341 | 422 |
| 4900 | 726 | 897 | 564 | 697 | 470 | 581 | 398 | 491 | 347 | 429 |
| 5000 | 738 | 912 | 574 | 708 | 479 | 592 | 404 | 500 | 353 | 437 |
| 5100 | 751 | 928 | 584 | 720 | 487 | 602 | 411 | 509 | 359 | 443 |
| 5200 | 763 | 943 | 593 | 732 | 494 | 611 | 418 | 517 | 365 | 451 |
| 5300 | 776 | 959 | 602 | 744 | 503 | 621 | 425 | 525 | 371 | 458 |
| 5400 | 788 | 974 | 612 | 756 | 511 | 632 | 432 | 533 | 377 | 466 |
| 5500 | 800 | 989 | 622 | 768 | 518 | 641 | 439 | 542 | 383 | 473 |
| 5600 | 812 | 1004 | 632 | 779 | 527 | 651 | 446 | 551 | 389 | 480 |
| 5700 | 825 | 1019 | 641 | 791 | 535 | 661 | 452 | 559 | 395 | 488 |
| 5800 | 837 | 1035 | 650 | 803 | 543 | 671 | 459 | 567 | 401 | 495 |
| 5900 | 850 | 1050 | 660 | 815 | 551 | 681 | 466 | 575 | 407 | 502 |
| 6000 | 862 | 1065 | 670 | 827 | 559 | 691 | 473 | 584 | 413 | 509 |
| 6100 | 875 | 1081 | 680 | 839 | 567 | 701 | 479 | 593 | 418 | 517 |
| 6200 | 887 | 1096 | 689 | 851 | 575 | 710 | 486 | 601 | 424 | 524 |
| 6300 | 899 | 1112 | 699 | 863 | 583 | 721 | 493 | 609 | 430 | 532 |
| 6400 | 911 | 1127 | 709 | 875 | 591 | 731 | 500 | 617 | 436 | 539 |
| 6500 | 924 | 1142 | 718 | 887 | 599 | 740 | 506 | 626 | 442 | 546 |
| 6600 | 936 | 1157 | 728 | 899 | 607 | 750 | 513 | 635 | 448 | 554 |
| 6700 | 949 | 1172 | 737 | 911 | 615 | 761 | 520 | 643 | 454 | 561 |
| 6800 | 961 | 1188 | 747 | 923 | 623 | 770 | 527 | 651 | 460 | 568 |
| 6900 | 974 | 1203 | 757 | 935 | 631 | 780 | 533 | 659 | 466 | 575 |
| 7000 | 986 | 1218 | 767 | 946 | 639 | 790 | 540 | 668 | 472 | 583 |
| 7100 | 998 | 1233 | 776 | 958 | 647 | 800 | 547 | 677 | 478 | 591 |
| 7200 | 1009 | 1248 | 785 | 971 | 654 | 809 | 554 | 684 | 484 | 598 |
| 7300 | 1021 | 1262 | 794 | 982 | 662 | 818 | 560 | 693 | 490 | 605 |
| 7400 | 1033 | 1276 | 803 | 993 | 670 | 828 | 567 | 701 | 496 | 613 |
| 7500 | 1044 | 1290 | 812 | 1004 | 677 | 837 | 574 | 709 | 502 | 620 |
| 7600 | 1055 | 1305 | 821 | 1015 | 685 | 846 | 581 | 718 | 507 | 627 |
| 7700 | 1067 | 1319 | 830 | 1026 | 692 | 855 | 587 | 726 | 513 | 634 |
| 7800 | 1078 | 1333 | 839 | 1037 | 700 | 865 | 594 | 734 | 519 | 642 |
| 7900 | 1089 | 1346 | 848 | 1048 | 707 | 874 | 601 | 742 | 525 | 649 |
| 8000 | 1100 | 1360 | 857 | 1059 | 714 | 883 | 607 | 750 | 531 | 656 |
| 8100 | 1112 | 1374 | 865 | 1069 | 722 | 892 | 614 | 759 | 536 | 663 |
| 8200 | 1123 | 1387 | 874 | 1080 | 729 | 901 | 620 | 767 | 542 | 670 |
| 8300 | 1134 | 1401 | 882 | 1091 | 736 | 910 | 627 | 775 | 548 | 677 |
| 8400 | 1144 | 1414 | 891 | 1101 | 743 | 919 | 633 | 783 | 553 | 684 |
| 8500 | 1155 | 1428 | 899 | 1112 | 750 | 928 | 640 | 791 | 559 | 691 |
| 8600 | 1166 | 1441 | 908 | 1122 | 758 | 936 | 646 | 799 | 565 | 698 |

| | | | | | | | | | | |
|-------|------|------|------|------|-----|------|-----|------|-----|-----|
| 8700 | 1177 | 1454 | 916 | 1133 | 765 | 945 | 653 | 807 | 570 | 705 |
| 8800 | 1187 | 1467 | 925 | 1143 | 772 | 954 | 659 | 815 | 576 | 712 |
| 8900 | 1198 | 1481 | 933 | 1153 | 779 | 962 | 665 | 822 | 582 | 719 |
| 9000 | 1208 | 1493 | 941 | 1163 | 786 | 971 | 672 | 830 | 587 | 726 |
| 9100 | 1219 | 1506 | 949 | 1173 | 792 | 980 | 678 | 838 | 593 | 732 |
| 9200 | 1229 | 1519 | 957 | 1183 | 799 | 988 | 684 | 846 | 598 | 739 |
| 9300 | 1239 | 1532 | 966 | 1193 | 806 | 996 | 691 | 854 | 604 | 746 |
| 9400 | 1250 | 1545 | 974 | 1203 | 813 | 1005 | 697 | 861 | 609 | 753 |
| 9500 | 1260 | 1557 | 982 | 1213 | 820 | 1013 | 703 | 869 | 614 | 759 |
| 9600 | 1270 | 1570 | 989 | 1223 | 826 | 1021 | 709 | 877 | 620 | 766 |
| 9700 | 1280 | 1582 | 997 | 1233 | 833 | 1030 | 716 | 884 | 625 | 773 |
| 9800 | 1290 | 1594 | 1005 | 1242 | 840 | 1038 | 722 | 892 | 631 | 779 |
| 9900 | 1300 | 1606 | 1013 | 1252 | 846 | 1046 | 728 | 900 | 636 | 786 |
| 10000 | 1310 | 1619 | 1021 | 1262 | 853 | 1054 | 734 | 907 | 641 | 793 |
| 10100 | 1319 | 1631 | 1028 | 1271 | 859 | 1062 | 740 | 915 | 647 | 799 |
| 10200 | 1329 | 1643 | 1036 | 1281 | 866 | 1070 | 746 | 922 | 652 | 806 |
| 10300 | 1339 | 1655 | 1044 | 1290 | 872 | 1078 | 752 | 930 | 657 | 812 |
| 10400 | 1348 | 1666 | 1051 | 1299 | 879 | 1086 | 758 | 937 | 662 | 819 |
| 10500 | 1358 | 1678 | 1059 | 1308 | 885 | 1094 | 764 | 944 | 668 | 825 |
| 10600 | 1367 | 1690 | 1066 | 1318 | 891 | 1102 | 770 | 952 | 673 | 832 |
| 10700 | 1377 | 1701 | 1073 | 1327 | 898 | 1109 | 776 | 959 | 678 | 838 |
| 10800 | 1386 | 1713 | 1081 | 1336 | 904 | 1117 | 782 | 966 | 683 | 844 |
| 10900 | 1395 | 1724 | 1088 | 1345 | 910 | 1125 | 788 | 974 | 688 | 851 |
| 11000 | 1404 | 1736 | 1095 | 1354 | 916 | 1132 | 794 | 981 | 693 | 857 |
| 11100 | 1413 | 1747 | 1102 | 1363 | 922 | 1140 | 799 | 988 | 698 | 863 |
| 11200 | 1422 | 1758 | 1110 | 1371 | 928 | 1147 | 805 | 995 | 703 | 869 |
| 11300 | 1431 | 1769 | 1117 | 1380 | 934 | 1155 | 811 | 1002 | 708 | 876 |
| 11400 | 1440 | 1780 | 1124 | 1389 | 940 | 1162 | 817 | 1009 | 714 | 882 |
| 11500 | 1449 | 1791 | 1131 | 1398 | 946 | 1170 | 822 | 1017 | 719 | 888 |
| 11600 | 1458 | 1802 | 1138 | 1406 | 952 | 1177 | 828 | 1024 | 723 | 894 |
| 11700 | 1467 | 1813 | 1145 | 1415 | 958 | 1184 | 834 | 1031 | 728 | 900 |
| 11800 | 1475 | 1823 | 1151 | 1423 | 964 | 1191 | 839 | 1038 | 733 | 906 |
| 11900 | 1484 | 1834 | 1158 | 1431 | 970 | 1199 | 845 | 1045 | 738 | 912 |
| 12000 | 1492 | 1844 | 1165 | 1440 | 975 | 1206 | 851 | 1051 | 743 | 919 |

The economic table is presumptive for combined monthly net incomes up to and including twelve thousand dollars. When combined monthly net income exceeds twelve thousand dollars, the court may exceed the maximum presumptive amount of support upon written findings of fact.

CERTIFICATE OF SERVICE

3/14/14 10:11 AM
COURT OF APPEALS
DIVISION II

I certify under penalty of perjury in accordance with the laws of the State of Washington that I am over the age of 18 years, that I am not a party to this action and that on July 7, 2014, I served a copy of the following document(s) by the method and on each attorney or party identified below.

Documents Served

AMENDED OPENING BRIEF OF APPELLANT

Person or Persons Served

Patricia McCarthy
1510 SE 3rd Avenue, Battleground, WA 98604.

By delivery by

- personal service to the person and at the location stated above
- sending the above documents by US Mail, postage pre-paid, to the person and location stated above.
- personal service to (name) _____, a person of suitable age and discretion residing at the above named person's usual abode.

and arranged for electronic copies of the preceding documents(s) together with this Certificate of Service to be filed in Division II of the Court of Appeals by delivery via email to:

The Clerk of the Court, Court of Appeals, Division II
coa2filings@courts.wa.gov

Dated this 7th day of July, 2014 at Vancouver, Washington.

Bill O Meara
Bill O Meara

CERTIFICATE OF SERVICE

I certify under penalty of perjury in accordance with the laws of the State of Washington that I am over the age of 18 years, that I am not a party to this action and that on July 7, 2014, I served a copy of the following document(s) by the method and on each attorney or party identified below.

Documents Served

AMENDED OPENING BRIEF OF APPELLANT

Person or Persons Served

Patricia McCarthy
1510 SE 3rd Avenue, Battleground, WA 98604.

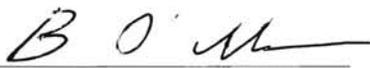
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- personal service to the person and at the location stated above
- sending the above documents by US Mail, postage pre-paid, to the person and location stated above.
- personal service to (name) _____, a person of suitable age and discretion residing at the above named person's usual abode.

and arranged for one original and copy of the preceding documents(s) together with this Certificate of Service to be filed in Division II of the Court of Appeals by delivery via US Mail, postage prepaid to:

The Clerk of the Court, Court of Appeals, Division II
950 Broadway, Suite 300, Tacoma, Washington 98402-4454

Dated this 7th day of July, 2014 at Vancouver, Washington.



Bill O Meara