

FILED
COURT OF APPEALS
DIVISION II

2015 AUG 14 PM 1:23

STATE OF WASHINGTON

BY  _____
DEPUTY

NO. 47128-1-II

COURT OF APPEALS, DIVISION II OF THE STATE OF
WASHINGTON

In re: the parentage of M.R.A.

Arika L.R. Toney;
Appellant,

v.

Timothy J. Aheren III
Respondent.

REPLY BRIEF OF APPELLANT

ARIKA L. R. TONEY
Appellant pro se
P.O. Box 34111
Reno NV, 89533
1-775-420-0263

Arika Toney
P.O. Box 34111
Reno, NV 89533
775-420-0263

TABLE OF CONTENTS

A. INTRODUCTION	p.1
I. ARGUMENT	p. 3
1. The untimely filing of Aheren’s brief 60 days After Toney filed her brief May 11, 2015 by counsel “not of record” in the case.	p. 3
A. The trial courts discretion.	p. 5
B. B1. The trial courts abuse of discretion and deviation from the standard support schedule	p.6
B.1. and 2. “Law of the Case” is new argument by Aheren under Legality, Toney’s Modification was based upon “Modifiability”, Whole Family Formula.	p. 9
C., 1 and 2. Appellants reply to Termination of transfer payment, child responsible for one-third payment and attendance of in state institution.	p.14
D. Aheren’s allegation that Toney’s remaining allegations are meritless	p. 19
D. Home State	p. 19
D. Father’s income , and Financial disclosure, “Math”, Support Calc.	p. 20
E. Award of attorney fees	p. 23
II. Conclusion	p.24

TABLE OF AUTHORITIES

CASES

<i>Assn. Washington Appellate Practice Deskbook</i> s/s 18.5 (2d. ed. 1993)	p. 8
<i>Blickenstaff</i> 71 Wn. App. At 498	p. 13
<i>Childers v. Childers</i> 89 Wn 2d 592, 575 P2d. 201 (1978)	p. 5, 18
<i>Marriage of Booth,</i> 114 Wash.2d 772 (1990)	p. 5, 2
<i>Marrage of Dodd,</i> 120, Wn. App. 638, 644,86 P 3d. 801 (2004)	p. 5,6
<i>Esteb v. Esteb</i> 138 Wash. 174, 244 P. 264 P. 27, A.L.R. 110 (126)	p. 18
<i>Gimlet v. Gimlet</i> 95 Wn. 2d. 699 703, 629 P.2d 450 (1998)	p. 6
<i>In re Marriage of Schnieder,</i> 173 Wn. 2d. 353,	p. 20
<i>In re Marriage of Landry,</i> 103 Wash. 2d. 807, (1985)	P.5

Lee, 57 Wash. App. At 277, 788 P 2d. 564

p. 7

In re Marriage of Lesie

90 Wash.App. 786,802-03, 954 P.2d 330 (1998)

Marriage of Briscoe 134 Wn. 2d. 344

p. 18, 22

Marriage of Morris 176, Wash. App. 893, (2013)

p. 15

Marriage of Shellenberger,

80 Wn. App. 71, 83, 906 P.2d 968 (1995)

p. 16

Marriage of Trichak, 72, Wn. App. 21, 24, 863 P2d. 585
(1993)

p. 6,9

Sacco v. Sacco 114, Wn. 2d. 3-4, 784 P. 1266 (1990)

p. 18,22

State. Ex rel. Taylor v. Dorsey, 81 Wn. App. 414, 423-24,
914 P2d. 773 (1996)

p. 22

State v. Neal,

144 Wn. 2d. 600 (2001)

p. 13

State v. Olivera,

89 Wn. App. 313 (1997).

p. 13

State v. Rundquist,

79 Wn. App. 786, 793, 905 P.2d 922 (1995)

p. 8

TABLE OF AUTHORITIES

STATUTES

26.09 100	p. 8
26.09. 006	p. 11
26.09.100	p. 7,8
26.19	p. 2,3,10, 13, 16, 17, 18, 19
26. 19. 001	p. 7
26.19. 035	p. 12, 18
26.19.035 (4)	p. 22
26.19.071	p. 21
26. 19. 075	p. 2
26. 19.080	p. 20,22
26.19. 090 (2)	p.15,20
26.19.090 (5)	p. 20
26.19.090 (6)	p. 20

COURT RULES

RAP 10.2	p. 3
RAP 10.2 (d)	p. 4
RAP 10.3	p. 4

RAP 10. 7

p. 4

RAP 18.9

p. 4

SCHOLARLY ARTICLES

WASHINGTON STATE BAR ASS'N, WASHINGTON
APPELLATE PRACTICE DESKBOOK

18.5 (2d ed. 1993), Review Denied 129 Wn. 2d 1003
(1996)

A. INTRODUCTION

Respondent's counsel seeks to minimize the abuse of discretion by Judge Bashor in relation to the absolute lack of Mr. Zandi and the court in application of the laws of the State of Washington, Federal law, court rules and the legislative intent for the best interests of the only child before the court in both setting Child Support and Post Secondary Educational Support commensurate with the afore mentioned legal requirements and duties placed upon all parties and the trial court in this action. Respondent, Aheren, and counsel seek above all else a downward deviation of support even though Aheren is earning almost double the income as in 2010 when he was granted a deviation "due to hardship". Aheren and counsel have deliberately misled the court by stating that the child is 18, when in fact at the time that Appellant Toney, filed for modification the child was 16, and graduated from high school at 16 and started her college education immediately. The final order from which this appeal is based was entered December 15, 2014 after the child's 17th. Birthday (July 12, 2014). The facts set forth above clearly establish a change of circumstance. Aheren's reply brief was dated July 10, 2015, (two days before the child's 18th. Birthday) Aheren's main goal throughout this proceeding has been to obtain a downward deviation of

child support, termination of child support and minimize post secondary educational support by requiring the child to support her own basic needs and contribute to her educational costs at age 17 when this child support order was signed December 15, 2014. Although all the parties and Judge Bashor agreed that she was dependant upon her parents for the basis necessities of life without any showing what-so-ever of the child's earning ability or financial assets, creating a manifest abuse of discretion inconsistent with the above mentioned laws and intent of the legislature and statutes of RCW 26.19.

Aheren's contention that the trial court's order was in any way within the trial courts discretion is without merit and frivolous in nature under the laws of Washington, court rules and legislative intent of RCW 26.19, and the established case law, the trial court's discretion is limited. The trial court has discretion to deviate but only if the evidence before the court warrants such a deviation, not , as in the usual course of the trial courts decision as in this case, unsupported by findings of fact and conclusions of law, unsupported by the required financial declaration to support a hardship or need for a deviation. Simply having other children is not supportive of a deviation under RCW 26.19.075.

The entirety of this modification of child support and for post secondary educational support is totally dependant upon both parties following the legislative intent of 26.19 which is reinforced by case law. The Father's goal and arguments are without merit, frivolous and are self serving designed to reduce or eliminate child support and post educational support in totality. Aheren has not relied upon the best interests of the child in his argument. The Court should remand and award fees and costs to the Mother and child, as Aheren's acts and omissions have caused delays, frustration of the legal process and increased expense to all parties along with the child loosing grants, scholarship moneys and educational opportunity.

I. ARGUMENT

1. The untimely filing of Aheren's brief 60 days after Toney filed her brief May 11, 2015 by counsel "not of record" in the case.

Aheren's counsel did not follow the rules, 10.2 (b) which Toney believes all parties must adhere to the same rules or suffer the consequences.

Therefore the court should be aware that Mr. Zandi's "Limited Notice of Appearance" in this matter was only for purposes of responding to Petitioner's motion for reconsideration (exhibit 1) Zandi officially

withdrew from the case on December 29, 2014 (exhibit 2) and a notice of association was filed by Smith Goodfriend, P. S. Valerie A. Villacin and Catherine Smith. (exhibit 3). Toney properly objected and brings this information before the court as Valerie Villacin and Chad Zandi have filed a Brief of Respondent in this case without proper notice of appearance on file either with Cowlitz County Superior Court of Division II of the Appeals Court. Without proper notice the respondent's brief should be stricken and counsel should be sanctioned RAP 10.7.

Counsel's untimely filing of the brief (60 days) after appellants brief with the clerk allowing double the time, contrary to RAP 10.2 (d) 30 days, still resulted in a brief containing unpublished opinions.

Aheren's counsel cited *Marriage of Healy 35 Wn. App. 402, 667 P. 2d 114*, rev. denied, 133 and *Marriage of Toney and Aheren, 150 Wn. App. 1042, 2009 WL 1610153, rev. denied, 167 Wn. 2nd 1007 (2009)*. Counsel and Aheren should be sanctioned for citing unpublished opinions.

Citation to Unpublished Opinion RAP 10.3(a)(6) requires the argument portion of an appellate brief to include citations to legal authority. RAP 10.7 and 18.9(a) authorizes us to sanction, sua sponte, a party or counsel for failing to comply with rules of appellate procedure. In Lalida's response brief, her counsel cited and relied on an unpublished appellate decision from this court. This violates GR 14.1(a), which prohibits citing unpublished Washington court of appeals opinions as authority.

Aheren's brief improperly designated or totally blank designation of clerks papers listed by page number only, without designation of official clerks paper numbering rendering the reply brief a burdensome waste of time for appellant and the court designed to delay the proceedings until the child reached majority age, however the child was still 17 when the brief was filed sanctions are appropriate under RAP 10. 7 and 10. 9

A. The Trial Courts Discretion.

Standard of Review:

The Standard of review when reviewing a trial court's order on modification of child support is abuse of discretion. See *Childers v. Childers*, 89 Wn 2d. 592, 575 P2d. 201 (1978).

Aheren argues "broad Discretion", *Marriage of Dodd*, 120 Wn. App. 638, 644, 86 P. 3d. 801 (2004) his citation is actually from *In re the Marriage of Leslie*, 90 Wash. App. 796, 802-03, 954 P2d. 330 (1998) although it is referred to in *Dodd*. Aheren further quotes *Marriage of Booth*, 114 Wn.2d. 772, 779, 791 P2d. 519 (1990) incorrectly, and *In re Marriage of Landry* 103 Wash 2d. 807 (1985)

Aheren's quote is inaccurate as well, sanctions are appropriate.

"We review a trial court's order of child support for abuse of discretion. *In re Marriage of Booth*. 114 Wn.2d 772, 776, 791 P.2d 519 (1990). A trial court abuses its discretion if its decision rests on unreasonable or untenable grounds. *Dix v. ICT Grp., Inc.*. 160 Wn.2d 826, 833, 161 P.3d 1016 (2007). A trial court necessarily abuses its

discretion if its ruling is based on an erroneous view of the law or involves incorrect legal analysis. Id.

Respondents argument that under *Marriage of Dodd*, 120 Wn. App. 638, 644, 86 P. 3d 801 (2004) “finality” being sought in child support cases is misplaced as cited in *Gimlett* below, the trial courts retains jurisdiction to set child support and post secondary educational support if the action is brought before a child attains age 18, unless otherwise provided in the order, as in this case section 3. 13 Sets the date child support would stop and section 3. 14. Reserves post secondary educational support, thereby extending child support until age 23 RCW.

B. and B. 1. The trial courts abuse of discretion and deviation from the standard support schedule.

Aheren’s, devoid of merit, redundant arguments with regards to “discretion and deviation” being the main focus of Aheren’s arguments in the brief , and “the law of the case” Appellant shall attempt to reply as follows due to the similarities of the issues and extensive reliance upon *Marriage of Trichak*, 72 Wn. App. 21, 24, 863 P. 2d. 585 (1993) by Aheren and counsel.

95 Wn. 2d. 699, 629 P. 2d. 450 IN RE MARRAGE OF GIMLETT

[2] Parent and child – Infants – Emancipation – What Constitutes. Emancipation, the time at which a child is released from parental control and a parent is released from the duty to support a child, may occur either by operation of law, I.E., when a child attains a

statutorily mandated age of majority, or by factual circumstances, I.E., when certain events are acknowledged as sufficient to terminate parental rights and duties in whole or in part regarding a child PRIOR to attainment of majority.

It is undisputed that the child was 16 when the mother filed for modification of child support and post secondary educational support as she was near graduation from high school and immediately began studies at college level courses. These facts are in of themselves a substantial circumstance known by the court. CP 638, 2.3.

RCW 26.09.170 (1) (b) The court must set the standard calculation in light of the basis for modification, but it has discretion to decide the extent of any deviation. *Lee, 57 Wash. App. At 277, 788 P 2d. 564*

Therefore the trial court must consider the age (16) of the child the financial assets available to the child in both households prior to making any determinations of deviation from the standard transfer amount by statutory limitations before discretion of the court is applied.

RCW 26.19.001 Legislative intent and findings

The legislature finds that these goals will be best achieved by the adoption and use of a statewide child support schedule. Use of a statewide schedule will benefit children and their parents by:

The legislature intends, in establishing a child support schedule, to insure that child support orders are adequate to meet a child's basic needs and to provide additional child support commensurate with the parents' income, resources, and standard of living. The legislature also intends that the child support obligation should be equitably apportioned between the parents.

RCW 26.09.100 Child support — Apportionment of expense — Periodic adjustments or modifications. (2) The court may require automatic periodic adjustments or modifications of child support. That portion of any decree that requires periodic adjustments or modifications of child support shall use the provisions in chapter 26.19 RCW as the basis for the adjustment or modification. Provisions in the decree for periodic adjustment or modification shall not conflict with RCW 26.09.170 except that the decree may require periodic adjustments or modifications of support more frequently than the time periods established pursuant to RCW 26.09.170.

[2] 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. *State v. Rundquist*, 79 Wn. App. 786, 793, 905 P.2d 922 (1995) (citing WASHINGTON STATE BAR ASS'N, WASHINGTON APPELLATE PRACTICE DESKBOOK § 18.5 (2d ed. 1993)), review denied, 129 Wn. 2d 1003 (1996).

The Father's other children are not before the court and no proof was ever presented that Aheren actually paid support, CP 640, 3.7, evidence was before the court that Aheren only cared for the children part time RP p. 30-31. The deviation the court granted was not only **not** (emphasis added) supported by the evidence but **no** (emphasis added) findings of

fact and conclusions of law supported the exceptional deviation by the trial court of 54.8 % or \$269.07 CP. 639, Support Calc page line 7.

B.1. and 2. “Law of the Case” is new argument by Aheren under legality, Toney’s Modification was based upon “Modifiability”,

Whole Family Formula

Aherens reliance upon *Marriage of Trichak*, 72 Wn. App. 21, 24, 863 P2d. 585 (1993) is based upon legality of the unchallenged deviation of the 2010 child support order (“the law of the case”) not the modifiability, *Trichak* above,

“ the reasons for deviation applicable at the time of entry of the Decree herein are no longer applicable [.]” On this basis, the trial court clearly had the ability to modify the deviation provision.

Trichak is misplaced as used by Aheren in that the offset of child support was based upon the child receiving Social Security benefits as a source of income for the child, no one contends that the child before the court had any source of income to offset the loss of child support by way of deviation which does not leave adequate moneys in the mothers household for the child’s support and increasing the mothers percentage of the standard amount of support..

It is clear that when the court entered the child support order of 2010 CP 561, the child was 13 years old, the child graduated high school at 16, is

now 18 attending the University of Nevada at Reno and not capable of self support and dependant upon her parents for the basis necessities of life CP 638, 2.3. Toney not only can challenge the “law of the case” but has on appeal stated that the modification is what is being challenged as the parties both enjoy higher incomes and the child was preparing to graduate high school and wished to attend college all of which is in compliance with RCW 26.19 for modification, Toney does not argue legality of the prior deviation, and only seeks to modify the child support and set child support at the standard calculation with child support for post secondary education and expenses according to statute without a unwarranted deviation contrary to law.

Aheren states at page 13 of his brief that “ the father proved that he was responsible for the support of his two younger children from his subsequent marriage.” “ the children will reside half time in his home where he will provide for their support.” This is new information not supported by the evidence before the court at trial. However taken at face value Aheren will only support the children half time apparently the mother will support the children half time with an unknown amount of support from Tim Aheren. The court found that Tim was married at the time of trial CP 612, p. 2, and based the findings accordingly using the incorrect math and Whole Family formula, with the usage of Support

Calc which is not an approved formula or form by the administrator of the courts RCW 26.09.006 a manifest abuse of discretion by the trial court in establishing support and awarding a deviation when the evidence before the court does not substantiate inability to pay or hardship as required by statute and Aheren produced no sworn financial declaration to support deviation.

Although Aheren's rationale for deviation may be valid at this time it was not at the time of trial and the trial court did not take into consideration Aheren's pending divorce and child support obligation CP 612 p. 2.

“This Court routinely grants the whole family method deviation and will do so here. (emphasis added) It applies when the parents of the children upon whom the deviation is based are married and that was the situation presented the day of trial. The Court will not speculate as to whether any resultant Dissolution will include a mandated child support order, as such are not generally granted in this county without one.”

“Since the whole family deviation is applied, the amount of support will drop.”

Clearly the trial court based its findings upon Aheren being married and no consideration was given to support of his other children. The court did not enter findings of fact and conclusions of law which would support the

Whole Family Method Deviation. Yet another manifest abuse of discretion unsupported by statute as a routine grant by Judge Bashor.

RCW 26.19.035
Standards for application of the child support schedule.

(1) Application of the child support schedule. The child support schedule shall be applied:

- (a) In each county of the state;
- (d) In setting temporary and permanent support;

The provisions of this chapter 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.

(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. The court shall enter written findings of fact in all cases whether or not the court: (a) Sets the support at the presumptive amount, for combined monthly net incomes below five thousand dollars; (b) sets the support at an advisory amount, for combined monthly net incomes between five thousand and seven thousand dollars; or (c) deviates from the presumptive or advisory amounts.

(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.

(4) **Court review of the worksheets and order.** The court shall review the worksheets and the order setting 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.

Ultimately the trial court failed to require the appropriate forms as per statute RCW 26.19 and the child support instructions from Aheren, to include a sworn financial declaration and penalty of perjury as a basis for determining the true transfer amount before the court considered any deviation.

“ in setting child support, the trial court must take into consideration all factors bearing upon the needs of the children and the parents’ ability to pay. *Blickenstaff*, 71 Wn. App. At 498.

Aheren never demonstrated any lack of ability to pay full support and the trial court made no findings of fact that would support inability to pay. CP 638.

A trial court abuses its discretion by misapplying the law. *State v. Olivera*, 89 Wn. App. 313 (1997).

The range of discretionary choices is a question of law and the judge abuses his or her discretion if the discretionary decision is contrary to law. *State v. Neal*, 144 Wn. 2d. 600 (2001).

RCW 26.19.075(1)(d). The trial court must enter written findings of fact supporting the reasons for any deviation or denial of a party's request for deviation

Aheren's argument of the court not abusing its discretion in maintaining the deviation established by the 2010 order and that the mother proved no substantial change of circumstance is totally without merit, Aheren's failure to provide a sworn financial declaration under penalty of perjury as required by statute did not substantiate any allowable expenses, to include his household expenses.

However he did establish certain income pay stubs which were almost double the gross income figures of 2010 when the deviation was based upon hardship, CP 561, the court granted a \$80.00 dollar deviation.

Aheren now enjoys a \$ 269.07 dollar deviation from the standard transfer amount of \$ 828.38. Aheren received a 336 % increase in deviated money's from M.R.A. Aheren also enjoys \$ 4, 007.79 per month in excess of his stated bills (without the required financial declaration) for his own personal use, His standard support obligation was only 18.1 % of his net income. With his deviation he only pays \$559.31 per month child support which is 12.2 % of his net until the child became of majority age 18, no child support is now paid so the percentage has dropped dramatically, dependant only upon college costs.

C. ,1 and 2. Appellants Reply to termination of transfer payment, child responsible for one – third payment and attendance of in state institution.

Toney now has an increased burden of full support of the child plus college expenses at two – thirds as the child is not capable of self support CP 638, 2.3, and Aheren has stopped paying of child support as the child has turned 18.

Aheren 's contention that the complaint regarding the transfer amount being moot is without merit this modification action was commenced on November 20, 2013, the child was 16 years of age, due to Mr. Zandi stalling off the hearing date until July 17, 2014 and Ms. Vallicin deliberately stalling filing her brief until the child's birthday almost passed (two days before the child's 18th. birthday) now they contend the terms of the order terminate the transfer payment.

176 Wn. App. 893, In Re Marriage of Morris

APPELWICK, J. -- When postsecondary educational support has been reserved in a child support order, it is properly requested in a petition for modification without the necessity to show a substantial change in circumstances has occurred.....

IV. Abuse of Discretion: Whether To Order Postsecondary Support

[8] 25 When considering a request for postsecondary educational support, RCW 26.19.090(2) directs the superior court to determine whether the child is in fact dependent and relying upon the parents for the reasonable necessities of life. The superior court may then exercise its discretion in determining whether and for how long to award support. *Id.* It is directed to consider factors including, but not limited to:

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 parents' 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.

Id. We review the decision for an abuse of discretion. *In re Marriage of Shellenberger*, 80 Wn. App. 71, 83, 906 P.2d 968 (1995).

It is abundantly clear that a child is entitled to child support and post secondary educational support under *Shellenberger*, and the relevant statutes,

Aheren's statement that "The obligator parent is not required to pay support under the child support schedule and a percentage of the cost of the child's postsecondary education " is wholly without merit and inconsistent with *Shellenberger*.

Judge Bashor did not follow the statutory language of RCW 26.19 or the case law in terminating child support when the child turned 18, when the standard language for extending support was set forth in the findings/conclusions of law CP 638, resulting in a manifest abuse of discretion.

Aheren's contention that the parents are of relatively modest means; the father is a laborer and the mother works as an office administrator is misleading at best, Aheren is a machinist, a skilled trade. Toney was a case

manager for immigration. CP 603. However due to a corporate takeover Toney is currently unemployed.

The child had opportunity to receive sizable grants and scholarships but did not qualify and lost all grants and scholarships due to Aheren claiming her on his 2013 income tax filing (he received about a \$5,000 refund) even though he was prohibited to do so, due to an arrearage of \$1,109 dollars on court ordered medical payments for which the trial court entered a judgment for Toney CP 640. Therefore the child is unable to contribute towards a one-third obligation because of Aheren's violation of the 2010 order Cp 561, 3.17.

Judge Bashor had no evidence to establish financial earning ability of the child for her one – third contribution for postsecondary education, resulting in an abuse of discretion by ordering that the child would be responsible for any portion of educational costs. Cp 640, 3.14.

Under the limitation of the parents postsecondary support Judge Bashor recognized that “As far as Post high school education orders, this is a somewhat unique case.” CP 612 p. 3, Judge Bashor' decision that Nevada and the University of Nevada at Reno would be the standard based for post secondary obligations, upon the fact that the child had resided in Nevada is totally contrary to RCW 26.19 and the Findings. Conclusions of law CP 638, and yet another manifest abuse of discretion.

In re Schneider, 173 Wash. 2d. 353 (2011) “ The UIFSA, provides that the duration of child support is governed by the laws of the original forum state.”

In this case it is undisputed that Washington is the state of first issue CP 24 .

The determination of when parents will be required to pay college expenses is circumstantial and fact specific Id.; *Childers v. Childers*, 89 Wn 2d. 592, 600, 575 P2d. 201 (1978). Washington courts have long held that a par Code > title 28> Part V> Chapter 115> s/s 1738B “child’s home State” means the State in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the State in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month period.

Washington courts have long held that a parent may be required to

help provide for their child’s college expenses. *Esteb v. Esteb* 138

Wash. 174, 244 P. 264 P. 27, A.L.R. 110 (1926).

In establishing the child support schedule of (RCW 26.19) in 1988, the Legislature indicated the calculation of support must be clearly articulated so that reviewing courts can determine the precise basis upon which a trial court made its child support decision. *Sacco v. Sacco*, 114 Wn. 2d. , 3-4, 784 P. 1266 (1990). Each child support order must "state the amount of child support calculated using the standard calculation and the amount of child support actually ordered." RCW 26.19.035(4).

In this case the parents incomes were substantial enough to pay tuition, Aheren’s portion is well below 45% if child support and college expenses were being paid, even without a deviation, Aheren simply doesn’t desire to

support his daughter, he will go to great lengths and pay any amount of attorney fee's to avoid child support.

D. Aheren's allegation that Toney's remaining allegations are meritless.

Toney's allegations of error's are well grounded in RCW statute and case law and the record does reflect that Judge Bashor did not follow the basic legislative intent required of the trial court to arrive at adequate support/transfer amount based on required financial information for both child support and post secondary educational support.

The trial courts decision is not to be based upon some "grand scheme" by counsel or the trial court, but must be based upon the legislative intent of RCW 26.19, the records and evidence presented at trial, anything short is an manifest abuse of discretion.

Aheren's misguided argument under section D. is not supported by the facts or record in this case.

D. Home State

Aheren's assertion that the trial court only addresses "Home State" for custody issues is frivolous and totally without merit with no supporting case law cited.

It is well settled that child support and post secondary education are both child support.

“In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the *obligation of support*.”

¶33 Washington's statutory scheme also supports the conclusion that postsecondary educational support is "support" within the meaning of UIFSA. The provisions for postsecondary educational support are found in chapter 26.19 RCW along with the child support schedule. RCW 26.19.090. Educational expenses for minor children are also available in a child support award. *See* RCW 26.19.080(3) (providing for tuition as a "special child rearing expense[]" that will be shared in the same proportion as the basic child support obligation). The child support schedule may be used to set the amount of postsecondary educational support. RCW 26.19.090(1). Moreover, an award of postsecondary educational support is contingent on a finding that the child is dependent and relying on the parents for the "reasonable necessities of life." RCW 26.19.090(2). In other words, the child, even after achieving the age of majority, is not self-sufficient and must be supported as would a minor child. Additionally, when the dependent child lives with one of the parents, postsecondary educational support can function just like ordinary child support, i.e., the obligor parent can be ordered to pay a monthly amount to the parent with whom the child resides. RCW 26.19.090(6). Postsecondary educational support, therefore, fits within the structure of the child support statute in general.

¶34 Finally, common sense dictates that an award of postsecondary educational support is a durational change to child support under the UIFSA. Postsecondary educational support is granted to support an otherwise adult child while pursuing education beyond high school; it is money paid to support a dependent child, therefore it is child support. And the statute sets a durational limit to this form of child support. RCW 26.19.090(5) (postsecondary educational support may not be ordered beyond the child's 23rd birthday).

D. Father's income, and Financial disclosure, "Math", Support Calc.

The trial court set Aheren's gross income at Cp 612, "the father's gross income shall be set at \$5,486. He will be granted tax deductions from his gross as he files (either single or married), so his net will need to be calculated. He gets to deduct the \$150/ month contribution towards retirement."

Judge Bashor's Supplemental Ruling re-set the gross, CP. 625, "2. There was also an error in the calculation of Respondent/ Obligor's gross income . Based upon the Gross Pay calculation section of the 2013 W-2 form, it appears that the Gross Monthly Income before any deductions for 401k, etc. should actually be \$5, 933.00 instead of the prior amount determined by the court of \$5, 344.00"

It is totally absurd and likely criminal, that any adult would arrive at net income by subtraction of 2014 taxes from 2013 gross income to establish 2013 net income, and contrary to RCW 26. 19 . 071

Judge Bashor CP 650, " she did not raise any issue of an unsigned financial declaration before or during the course of the trial to this Court's recollection, or at any point until this motion for reconsideration. Having failed to do so, any objection to that document was waived."

Toney had on several occasions raised the issue of no financial information from Aheren CP 595 p. 1, 2, 1.6, also RP p. 5, RP 10-24-2014 p. 121.

Therefore Judge Bashor's statement is totally incorrect.

The issue of the “Math” Judge Bashor’s math was incorrect in his original order CP 612, the worksheets Cp 639, the final order of Child support Cp 640 contains two different amounts of child support ordered under 3.5 and 3.13 with no math showing how the amounts were arrived at, contrary to:

134 Wn. 2d. 344, MARRIAGE OF BRISCOE In establishing the child support schedule of(RCW 26.19) in 1988, the Legislature indicated the calculation of support must be clearly articulated so that reviewing courts can determine the precise basis upon which a trial court made its child support decision. Sacco v. Sacco, 114 Wn. 2d. 1. 3-4., 784 P.2d 1266 (1990). Each child support order must "state the amount of child support calculated using the standard calculation and the amount of child support actually ordered." RCW 26.19.035(4).

Using a standard child support worksheet, a trial court must first calculate the parents' monthly income pursuant to RCW 26.19.071(1). State ex rel. Taylor v. Dorsey, 81 Wn. App. 414, 423-24, 914 P.2d 773 (1996) (prior to assessing child support, the court must first calculate the parents' monthly income). See also Sacco, 114 Wn.2d at 3-5. After the combined monthly income of the parents is determined, the basic child support obligation is allocated between the parents based on each parent's share of the combined monthly income. RCW 26.19.080. The trial court has authority to deviate from the child support schedule when calculating child support obligations as long as the specific reasons for the deviation are set forth in written findings of fact or an order and are supported by evidence. In re Marriage of Booth, 114 Wn.2d 772, 777, 791 P.2d 519 (1990). Any deviations from the standard calculation are made after the total income of both parents has been computed.

Judge Bashor simply did not follow the RCW’s to do the math to arrive at the standard calculation of the transfer payment and Zandi did not provide math that was in compliance with the statutes or provide his math as proof he was correct, he simply used Support Calc, which shows no math, and

juggled the figures by increasing the W-2 tax withholding to maintain a low support obligation for Aheren with a maximum deviation.

The facts before the court were that Aheren's income had nearly doubled, he was deemed to be married on the day of trial. Aheren did not file a financial declaration under penalty of perjury as required by statute and court rule, the child before the court was M.R. A. whom had graduated high school at 16 years of age and had began college courses and was dependant upon her parents for the basis necessities of life, the trial court at no time relied upon the "law of the Case" in the written opinion or findings/ conclusions on petition for modification of child support CP 638 the trial court relied upon support calc for the math, CP 639 but the Judge Bashor did not complete the math, granting Aheren a substantial deviation from the standard calculation, a manifest abuse of discretion.

Judge Bashor did not require the sworn financial declaration of Aheren or his wife contrary to RCW 26.19 before making any determination as per Aherens requested deviation and no findings/ conclusions on petition for modification of child support CP 638 were entered that would support a basis for the deviation. The Child Support Worksheet CP 639 at line 7 and 9 deducted \$269.07 from the incorrect basic support obligation.

E. Award of Attorney fees .

“Allowing a citizen who hired an attorney to get fees but not [making the award available to *pro se* litigants] creates a windfall for the defendant who doesn’t have to pay the fees . . . just because he had the good fortune to commit his wrong” upon an unrepresented party. Beyond creating a windfall, denying the *pro se* party an attorney’s-fees award controverts express legislative policy. Any objections to making the award that are based on a strict interpretation of the rule’s language or on fee-shifting provisions in other statutes must fail in the face of Congress’s, the bar’s, and society’s insistence on deterring offensive and abusive litigation practices. Granting the *pro se* litigant attorney’s fees does no more than ensure that parties play by the rules and that they suffer the appropriate consequences when they transgress those rules.

Pro se litigants are required to play by the same rules as attorneys and suffer consequences for their lack of rules and procedures, attorney’s are given wide latitude and seldom receive sanctions for their inadequate performance, it would be discriminatory to not award fees and costs when a pro se litigant prevails.

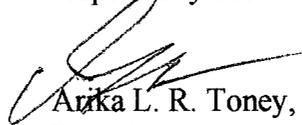
II. CONCLUSION

The Court should remand this matter with instructions to the trial court to re-calculate the child support and post secondary educational support, requiring Aheren to produce a sworn financial declaration. The trial court must follow the RCW statutes and case law in arriving at the transfer amount, grant a deviation only if the deviation is warranted by law and

will not leave inadequate money's in the Mothers household. The trial court should be required to set post secondary educational support commensurate with the parents ability to pay their respective percentages and award fees and costs to Toney as Aherens refusal to provide financial information has caused a financial burden upon the Mother and child and loss of scholarships and grants, which both parties now must pay along with legal costs.

Dated August 10th , 2015 at Castle Rock, Washington.

Respectfully submitted,



Arika L. R. Toney, pro se
P.O. Box 34111
Reno NV. 89533
1-775-420-0263

FILED
COURT OF APPEALS
DIVISION II

2015 AUG 14 PM 1:22

STATE OF WASHINGTON

BY _____
DEPUTY

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

Arika L. R. Toney
Appellant,

No. 47128-1-II

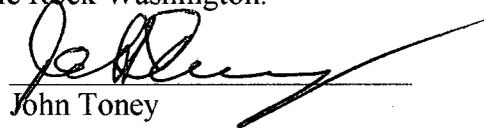
v.

Timothy J. Aheren III,
Respondent

I John Toney, being of majority age and not a party to the action and competent to testify in the above named matter state as follows:

1. That I did place in the U.S. mail, two copies of Plaintiff's Reply Brief of postage prepaid addressed to the Court of Appeals Division II, 950 Broadway, suite 300, Tacoma Wa. 98402
2. One copy to each named attorney, of Appellant's Reply Brief and a copy of the proof of service, addressed to
Vallerie Viiacin, Catherine Wrigh- Smith at Smith Goodfriend PS, 1619 8th. Ave. North Seattle Wa. 98109 and Chad Zandi 950 12th. Ave. londview Wa. 98632 at Castle Rock Washington on August 10, 2015.

Declaration: I John Toney, certify/ declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.
Dated August 10, 2015, signed at Castle Rock Washington.

A handwritten signature in black ink, appearing to read 'John Toney', is written over a horizontal line. The signature is stylized and extends to the right of the line.

John Toney
9531 Barnes Dr.
Castle Rock Wa. 98611