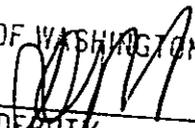


FILED  
COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

BY   
DEPUTY

No. 47512-0

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

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BRIAN PAUL RODERICK,  
Appellant,

v.

CHRISTINA MARIE RODERICK  
Respondent.

---

**BRIEF OF APPELLANT**

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## ASSIGNMENTS OF ERROR

1. The trial court erred by imposing 26.09.191 restrictions against Mr. Roderick.

Final Parenting Plan, 03/06/15 (CP 80-91)

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2. The trial court erred by failing to impute income to Ms. Roderick for purposes of calculating child support

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3. The trial court erred by failing to provide Mr. Roderick with mandatory deductions from his income for the purposes of calculating income.

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4. The trial court erred by awarding Ms. Roderick spousal maintenance in the amount of \$850 a month for a period of two years.

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## ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court err by imposing 26.09.191 restrictions against Mr. Roderick?  
Assignments of Error 1.
2. Did the trial court err by failing to impute income to Ms. Roderick for the purposes of calculating child support?  
Assignments of Error 2.
3. Did the trial court err by failing to provide Mr. Roderick statutory deductions from his income for the purposes of calculating child support?  
Assignments of Error 3.
4. Did the trial court err by awarding Ms. Roderick spousal maintenance in the amount of \$850 a month?  
Assignments of Error 4.

## STATEMENT OF THE CASE

A dissolution proceeding with three minor children underlies this appeal. At issue is the trial court's final orders imposing RCW 26.09.191 restrictions against Mr. Roderick, calculation of child support, and award of maintenance for Ms. Roderick.

### **Factual background**

Brian Roderick and Christina Roderick married on November 21, 1998 and subsequently separated on June 13, 2014. 02/19/15 VRP 9. The parties have three children born of issue from the marriage: Madisen Roderick (14), Brittan Roderick (12), Peyton Roderick (9), and Brooklyn Roderick (6). VRP 9.

After being a stay-at-home mom for most of the marriage, Ms. Roderick became gainfully employed in December 2013 as a Para Educator for Clover Park School District. 02/19/15 VRP 10. Ms. Roderick's employment is contract based providing her with work throughout the full calendar year at an hourly wage of \$14.66. 02/19/15 VRP 11. Ms. Roderick holds an Associate of Arts and Science Degree.

Throughout the marriage Mr. Roderick held a number of temporary / short-term employment positions. 02/19/15 VRP 74. In the later portion of the marriage Mr. Roderick became primarily employed within the insurance industry working for a variety of companies.

02/19/15 VRP 76. Most recently Mr. Roderick was employed with Farmer's Insurance from 2012 before being laid off in 2013. After approximately three months of unemployment Mr. Roderick was offered a position with Colonial Life. 02/19/15 VRP 76.

Mr. Roderick's current employment is 100% commission based. 02/19/15 VRP 76. Mr. Roderick has only a high school education with limited ability for upward movement. 02/19/15 VRP 81. Mr. Roderick earned a gross income of approximately \$30,000.00 for the 2014 tax year. 02/19/15 VRP 76. Mr. Roderick's 2013 tax return reflected a higher gross income due to increased sales resulting from the Affordable Care Act. CP 134. Mr. Roderick's current gross monthly income is approximately \$2,610. CP 168.

After the parties separated the court entered a temporary parenting plan that placed the children primarily with Ms. Roderick and provided Mr. Roderick every other weekend plus two mid-week visits. 02/19/15 VRP 13.

On February 2, 2015 the parties, both pro-se, proceeded to trial. 02/19/15 VRP 1. Neither party presented any witness other than each party and limited exhibits and testimony. After a bench trial the court issued an oral ruling that was subsequently reduced to final orders entered

by the court on March 6, 2015. The court found a basis for RCW

26.09.191 factors stating:

Madisen, for whatever reason, is not wanting to go and spend all of the time that she would otherwise spend with Dad, according to the temporary parenting plan, and although Mrs. Roderick said that she does for major holidays, I believe she said Christmas and she mentioned another one, Father's Day –

MR. RODERICK: Those are the only two.

THE COURT: -- because of that, it indicates to me that there is a significant breakdown between Father and child, and a .191 factor is going to be found, and that will be under paragraph 2.1, physical, sexual or a pattern of emotional abuse of a child. VRP 105.

As for financial issues, the court set Mr. Roderick's income at a net of approximately \$2,600 a month, based at least partially on his 2013 tax return. 02/19/15 VRP 111. The court declined to input income to Ms. Roderick and instead opted to use her actual earned income. 02/19/15 VRP 110. In addition, the court awarded Ms. Roderick \$850 a month for spousal maintenance. This results in Mr. Roderick having a combined child support and maintenance obligation of \$1,973 a month. CP 134.

Mr. Roderick raised his concern to the court at the time of the court's ruling:

MR. RODERICK: Just in regards to the maintenance. You know, that puts me at less than a thousand - - about \$600 a month to live on?

THE COURT: I'm aware of the math, yes.

MR. RODERICK: And I have a contract with my roommate for at least a minimum of \$800. I don't know what to do about that.

THE COURT: Okay. Any other questions?

02/19/15 VRP 111.

Mr. Roderick moved the court for reconsideration on March 16, 2015. CP 130. That motion was subsequently denied on April 24, 2015 with the exception of correcting minor scrivener errors. CP 177-178.

Mr. Roderick now appeals.

### **Procedural Background**

Ms. Roderick filed a Petition for Dissolution of Marriage on 02/18/14. The parties had numerous temporary orders and contempt proceedings throughout the pendency of the matter. On 02/19/15 the matter came before the court for trial. The court entered final pleadings on 03/06/15. Mr. Roderick moved for reconsideration on 03/16/15 and his motion was denied on 04/24/15

## **ARGUMENT**

- I. THE TRIAL COURT ERRED BY IMPOSING RCW 26.09.191 RESTRICTIONS AGAINST MR. RODERICK THAT ARE NOT SUPPORTED BY THE EVIDENCE AND WITHOUT ENTERING SPECIFIC FINDINGS**

**Standard of Review Pertaining to Parenting Plan provisions.**

A trial courts' decision on the provisions of a parenting plan is reviewed for abuse of discretion. *In re the Marriage of Littlefield*, 133 Wash.2d 39, 46, 940 P.2d 1362 (1997). A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *Littlefield*, 133 Wash.2d at 46-47, 940 P.2d 1362. 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. *Id.* at 47, 940 P.2d 1362.

“While a parenting plan is reviewed for abuse of discretion, the trial court's discretion is cabined by several provisions in chapter 26.09...RCW 26.09.191(3) bars the trial court from "preclud[ing] or limit[ing] any provisions of the parenting plan" (i.e., restricting parental conduct) unless the evidence shows that "[a] parent's ... conduct may have an adverse effect on the child's best interests." *In re Marriage of Chandola*, 327 P.3d 644, 180 Wn.2d 632 (2014).

In the present case the trial court abused its discretion by entering RCW 26.09.191 restrictions against Mr. Roderick that are not supported by the evidence and without entering specific findings.

**RCW 26.09.191 restrictions for abuse.**

RCW 26.09.191 provides that:

(b) The parent's residential time with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct: (i) Physical, sexual, or a pattern of emotional abuse of a child; (ii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm; or (iii) the person has been convicted as an adult or as a juvenile has been adjudicated of a sex offense under: (g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child. (Emphasis added).

Ms. Roderick provided brief testimony that Mr. Roderick would frequently hit or yell at the children. 02/19/15 VRP 19-22. Ms. Roderick was unable to produce any CPS reports, medical documentation, therapist recommendations, or other evidence to support her accusations. Mr. Roderick denied that the alleged abuse took place. 02/19/15 VRP 94. In fact, Mr. Roderick obtained a letter from the child's counselor indicating that no abuse had been reported to the counselor. CP 79.

In contrast, during cross-examination Ms. Roderick testified as follows:

(By Mr. Roderick): Did you ever hit the children?

A: Yeah.

Q: Did you ever spank the children?

A: Yes.

Q: Did you ever swear at the children?

A: Yes.

Q: Did you ever kick the children?

A: No.

Q: Never? Not once?

A: I don't recall that, no.

Q: Did you ever demean the children?

A: I know what – no. I don't feel like I did, no.

Q: Okay. Did you ever slap Madisen in the face?

A: Probably.

02/19/15 VRP 70.

Ms. Roderick admits through her own testimony that she has been abusive to the children.

The court's oral ruling simply provided:

THE COURT: ...Madisen, for whatever reason, is not wanting to go and spend all of the time that she would otherwise spend with Dad, according to the temporary parenting plan, and although Mrs. Roderick said that she does for major holidays, I believe she said Christmas and she mentioned another one, Father's Day –

MR. RODERICK: Those are the only two.

THE COURT: -- because of that, it indicates to me that there is a significant breakdown between Father and child, and a .191 factor is going to be found, and that will be under paragraph 2.1, physical, sexual or a pattern of emotional abuse of a child.  
02/19/15 VRP 105.

The court makes no specific findings as to what abuse occurred; rather, the entirety of the findings are based upon the perceived breakdown in communication between Mr. Roderick and his teenage daughter.

A court may not impose limitations or restrictions in a parenting plan in the absence of express findings under RCW 26.09.191. Any limitations or restrictions imposed must be reasonably calculated to address the identified harm. *Katare v. Katare*, 105 P.3d 44, 125 Wn.App. 813 (2004). Here the court fails to provide express findings as to what alleged abuse actually occurred. In addition, the court refused to consider Mr. Roderick's evidence supporting his argument that no abuse occurred. Simply basing restrictions on the perceived breakdown in a parent-child relationship does not support a finding of abuse.

## **II. THE TRIAL COURT ERRED BY NOT IMPUTING INCOME TO MS. RODERICK.**

### **Standard of Review Pertaining to Child Support Orders.**

A child support order is reviewed for an abuse of discretion. *In re Marriage of Booth*, 114 Wn.2d 772, 776, 791 P.2d 519 (1990). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). Substantial evidence must support the trial court's factual findings. *In re Parentage of Goude*, 152 Wn.App. 784, 790, 219 P.3d 717 (2009). This court will not substitute its judgment for trial court judgments if the record shows the court considered all relevant factors and the award is not unreasonable under the circumstances. *Booth*, 114 Wn.2d at 776.

#### **Imputation of Income.**

RCW 26.19.071 provides in part:

(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, aged, blind, or disabled assistance benefits, pregnant women assistance benefits, essential needs and housing support, 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.

The statute is clear that the court shall impute income to a parent that is voluntarily underemployed or unemployed. "Voluntary underemployment" has not been defined in Washington, but it should be treated similarly to voluntary unemployment that has been defined as "unemployment that is brought about by one's own free choice and is intentional rather than accidental." *In re Marriage of Brockopp*, 78 Wn.App. 441, 446 n.5, 898 P.2d 849 (1995).

No testimony was offered that Ms. Roderick was unemployable or not fully employable for any reason. In fact, the testimony showed that she is better educated than Mr. Roderick and is voluntarily seeking additional education. 02/19/15 VRP 12. Furthermore, Ms. Roderick testified that she currently earns \$14.66 an hour. 02/19/15 VRP 11. Since Ms. Roderick is employed at a wage far above minimum wage she possesses suitable work skills.

Based upon Ms. Roderick voluntarily working part-time, her income should be imputed to full-time earnings per the statute.

**III. THE TRIAL COURT ERRED BY FAILING TO PROVIDE MR. RODERICK WITH STATUTORILY REQUIRED DEDUCTIONS FROM HIS INCOME FOR PURPOSES OF CALCULATING CHILD SUPPORT.**

RCW 26.19.071 provides to the court the standard for determining income for child support purposes. RCW 26.19.071(5) provides in part:

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

- (a) Federal and state income taxes;
- (b) Federal insurance contributions  
act deductions;
- (c) Mandatory pension plan  
payments;
- (d) Mandatory union or professional  
dues;
- (e) State industrial insurance  
premiums... (emphasis added)

The statute as enacted by the legislature binds the court.

Mr. Roderick testified at trial that in 2014 he had a gross annual income of a little over \$30,000 a year, or \$2,500 a month. 02/19/15 VRP 76. When later asked by the court whether or not he had a reason to dispute net monthly income of \$2,600, he answered no. VRP 77.

Mr. Roderick provided additional paystubs and his 1099 with his motion for reconsideration. CP 25-77, 134. The documentation provided by Mr. Roderick supported his original assertion that his actual gross income is approximately \$2,600 a month. On reconsideration the court

refused to look at this documentation, instead relying exclusively on Mr. Roderick's misstatement that a net of \$2,600 was his correct income.

The court entered Child Support Worksheets that simply provided imputed net income to Mr. Roderick, despite the availability to calculate actual income based upon his true earnings. CP 108. No statutory deductions were provided. CP 108. Mr. Roderick's income should be calculated based upon actual earnings and complete statutory deductions.

#### **IV. THE TRIAL COURT ABUSED ITS DISCRETION BY AWARDING MS. RODERICK SPOUSAL MAINTENANCE.**

The trial court awarded spousal maintenance to Ms. Roderick in the amount of \$850 a month for two years. 02/19/15 VRP 111. This is in excess of the \$650 requested by Ms. Roderick. 02/19/15 VRP 41.

RCW 26.09.090 provides:

(1) In a proceeding for dissolution of marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for maintenance following dissolution of the marriage or domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner, the court may grant a maintenance order for either spouse or either domestic partner. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to misconduct, after

considering all relevant factors including but not limited to:

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

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

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

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

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

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

Neither party offered a financial declaration at time of trial to assist the court. Ms. Roderick provided virtually no testimony regarding her

financial need for maintenance. As part of Mr. Roderick's motion for reconsideration he did provide a financial declaration indicating that he has no ability to pay. CP 167.

Mr. Roderick's combined child support and spousal maintenance obligation comes to \$1,972 a month. CP 133-134. Using the court's calculation of Mr. Roderick's income, and without consideration to spousal maintenance, Mr. Roderick's child support obligation alone is 43% of his income. Using Mr. Roderick's actual income, his child support obligation is 54% of his income, far exceeding the 45% threshold.

Even if one were to consider the court's determination of Mr. Roderick's net income of \$2,600 a month to be accurate, this would result in a monthly surplus of \$628 for Mr. Roderick to pay all of his everyday living expenses. When Mr. Roderick raised the issue to the court the answer he received was simply, "I am aware of the math, yes." 02/19/15 VRP 111. Even if Ms. Roderick establishes financial need, Mr. Roderick does not have the financial ability to pay even when using the court's own income calculations.

The court's decision is manifestly unreasonable due to it being outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds and the factual findings are unsupported by the record; therefore, the court has abused its

discretion in setting spousal maintenance. See *Littlefield*, 133 Wash.2d at 47.

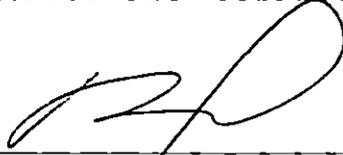
### CONCLUSION

The trial court abused its discretion by imposing RCW 26.09.191 restrictions against Mr. Roderick without specific findings or substantial evidence to support any findings. Likewise, the court committed errors of law and abused its discretion by failing to impute income to Ms. Roderick and improperly calculating income for Mr. Roderick. Lastly, the court abused its discretion by setting spousal maintenance without a showing of need by Ms. Roderick or the ability to pay by Mr. Roderick despite knowing that the payments left him with virtually no money to cover his living expenses.

Mr. Roderick respectfully requests that this court reverse and remand this matter to trial court with instruction to vacate the RCW 26.09.191 restrictions, recalculate child support based upon correct incomes, and vacate the award of spousal maintenance.

DATED this 7<sup>th</sup> day of July 2015.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to be 'A. Helland', written over a horizontal line.

Andrew Helland, WSBA #43181  
Attorney for Brian Roderick, Appellant

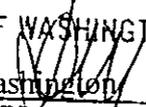
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**Declaration of Transmittal**

STATE OF WASHINGTON

Under penalty of perjury under the laws of the State of Washington

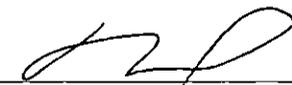
  
~~DEPUTY~~

I affirm the following to be true:

On this date I transmitted the original document to the Washington State Court of Appeals, Division II, by personal service and delivered a copy of this document via US POSTAL SERVICE:

Christina Roderick  
10304 109<sup>th</sup> St. Ct. SW  
Lakewood, WA 98498

Signed at Tacoma, Washington on this 7<sup>th</sup> day of July 2015.

  
\_\_\_\_\_  
Andrew Helland