

296512

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

MARGARET A. (CHLARSON) GRIGG,

Petitioner/Respondent,

v.

TRAVIS QUINN. CHLARSON,

Respondent/Appellant.

BRIEF OF APPELLANT

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1 Brief of Appellant.

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ASSIGNMENT OF ERROR NO. 1

The court erred in proceeding to order postsecondary educational expenses without income information from the moving party.

ASSIGNMENT OF ERROR NO. 2

The court erred in ordering the postsecondary education expense be paid by only one parent.

ASSIGNMENT OF ERROR NO. 3

The court erred in entering an order for a postsecondary educational expense obligation which does not terminate.

ASSIGNMENT OF ERROR NO. 4

The court erred in ordering the postsecondary educational expenses be paid to the Washington State Support Registry.

STATEMENT OF THE CASE

The Petitioner, Margaret Grigg (fka Margaret Chlarson), hereinafter the Petitioner, filed a Petition for Modification of Child Support (CP 1-6) and later an Amended Petition for Modification

(CP 20-22).

Respondent filed his response (CP 37-38) on August 27, 2010 requesting that “The Court should modify the order of child support by terminating post-secondary support obligation.” (CP 37-38).

Various hearings on the modification were heard and continued by the court culminating in the court’s written decision of September 28, 2010 (CP 83-84).

The matter was noted for presentment and entered on December 10, 2010 (CP 86-98 and RP 1-15).

At hearing on the presentment of orders pursuant to the court’s written ruling (CP 83-84), Respondent objected to entrance of the court’s ruling in its entirety as the matter was not property before the court.

“MR. KENISON: No, that’s fine. Again, we’re on for presentment of orders, Your Honor. I’m not trying to appeal a case down here at Counsel table on presentment of orders.

THE COURT: Do you have an order?

MR. KENISON: I do not have an order, Your Honor.

THE COURT: Okay.

MR. KENISON: Because I don't think an order's appropriate, quite frankly. I don't think we're at a - - I don't think one can be entered, I guess, is my, my point."

(RP 9-10).

". . . The problem is is that what is envisioned by the statute is first the Court has to arrive at income figures for both of the parties in order to - - . . . The child support is determined by the worksheets, then becomes something of a guidance for the Court. You're free to deviate from it, but the starting point is to first determine what the income of the various parties are. The Court doesn't have that information. And the reason you don't have that information, quite frankly, is because Mrs. Griggs (sic) never came forward with her information respecting her own income."

(RP 5, lines 3-18).

The Court never received income information from the Petitioner

as required by 26.19 et seq and was without authority to proceed.

“MR. KENISON: Once you have made that determination, then you have to divide the responsibility for post-secondary support, and Your Honor’s order only makes it incumbent upon one party. It’s only Mr. Chlarson - -

THE COURT: Okay.

MR. KENISON: - - who has on obligation under this order to pay anything”

(RP 6, lines 8-17).

The Order of Child Support (CP 91-98) only requires the Respondent to contribute to the post-secondary educational support.

(Emphasis added.)

The court failed to follow the clear language of 26.09.160(5) which requires that the court not order postsecondary education expenses beyond the child’s twenty-third birthday unless the court makes a finding of exceptional circumstances (mental, physical or emotional disabilities).

“MR. KENISON:3.13, there’s a termination provision in here that simply says that when D.C. completes his

post-secondary education. Statutorily – I mean, the way that’s drafted, he could be completing his post-secondary education when he’s my age. The statute contemplates not beyond the age of 23.” (RP 7, lines 18-24).

The language of the court’s order simply provides:

“3.13 Termination of Support

When DC completes his post secondary education.” (CP 91-98).

No findings were made by the court to support a termination beyond age 23.

The court entered the Order on Modification of Child Support without correcting the language of the order to reflect the court’s written ruling.

The court’s written ruling directly stated:

“Finally, the payments I now order shall be paid directly to CD’s school. RCW 26.19.190(6).” (CP 83-84).

The Order of Child Support entered by the court (CP 91-98) provided under subsection 3.11 that the Respondent was to make support

payments to the Washington State Support Registry.

26.19.090(6) sets out the method of payment for postsecondary support:

”The court shall direct that either or both parents’ payments for postsecondary educational expenses be made directly to the educational institution if feasible. If . . .not feasible, then . . .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 . . .the support transfer payments . . . to the child or to the parent who has been receiving . . .payments.”

Her the court provided that the education institution should receive the payment in its written ruling (CP 83-84) and then failed to incorporate it into the final order in contravention of its own written ruling and in violation of 26.19.090(6).

“MR. KENISON: Thank you,
Your Honor.

As Mr. White points out, the Court had initially - - had ruled that these payments

were to be made to the institution, which I think that the order needs to reflect. . . .”

(RP 4, lines 9-14).

An objection to the proposed order was made and was preserved for review by this court.

“MR. KENISON: . . . It also needs to reflect that this child be - - and the Court did include this . . . you had indicated that as a condition he had to be enrolled in an accredited academic institution actively pursuing a course of study. I read that to be a fulltime student.

THE COURT: Uh-huh (affirmative).

MR. KENISON: And being in good academic standing. None of those are part of the order that Mr. White has this morning, unless he’s interlineated those.”

(RP 4, lines 14-25).

The Order of Child Support (CP 91-98) does not reflect this ruling despite Respondent’s objection.

ARGUMENT

“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:

. . . .

(c) In all proceedings in which child support is determined or modified;”

“RCW 26.19.071 **Standards for determination of income.**

1) **Consideration of all income.** All income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent. . . .

(2) **Verification of income.** Tax returns for the preceding two years and current paystubs shall be provided to verify income and deductions. . . .”

The Petitioner never filed nor served copies of any income

verification in support of this medication action.

“RCW 26.09.175 Modification of order of child support.

(1) A proceeding for the modification of an order of child support shall commence with the filing of a petition and worksheets. . . .”

Petitioner failed to file worksheets with either the initial petition or the amended petition. (CP 1-6 & 20-22 respectively).

“RCW 26.19.080 Allocation of child support obligation between parents.

(1) 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.”

Since no income information was obtained from the Petitioner and no worksheets were able to be generated pursuant to the statute (26.09.175(1)) the only party addressed in the order of child support (CP 91-98) is the Respondent in clear violation of the statute regarding allocation between the parties.

**“RCW 26.19.090 Standards for
postsecondary educational support
awards.**

(5) The court shall not order the payment of postsecondary educational expenses beyond the child's twenty-third birthday, except for exceptional circumstances, such as mental, physical, or emotional disabilities.”

Petitioner neither pled nor argued the existence of exceptional circumstances and the court erred in ordering postsecondary support be paid until “. . . DC completes his postsecondary (sic) education.” (CP 91-98).

“RCW 26.19.090(6) The court shall direct that either or both parents' payments for postsecondary educational expenses be 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 be 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.”

Here, the court ruled in its written opinion that the payments would be made “. . . directly to CD’s school.” (CP 83-84).

The Court did not hear additional argument and made no further ruling at the hearing on presentment, but simply entered orders which did not conform to the court’s ruling or the state statute, above cited.

CONCLUSION

The court’s entrance of an order modifying child support failed to meet both statutory mandate of RCW 26.09 et and 26.19 et seq as well as failing to follow the court’s own written ruling and is unreasonable.

The court failed to determine the income of the parties prior to setting a support obligation.

The court failed to apportion the support obligation among and between the parties.

The court failed to provide for a date of termination of the postsecondary education expense obligation or make findings which

allowed for an extension of the obligation beyond the age of 23.

The court erred in providing that support be paid to the Washington State Support Registry as the statute governing payment does not provide for that option.

I respectfully request this court to reverse the decision of the trial court and dismiss the action, or in the alternative, to remand for further proceedings consistent with the statute.

I respectfully request an award of attorney's fees and costs pursuant to RAP 18.

Respectfully submitted this 28th day of June, 2011.

By 
SHANE L. KENISON, WSBA #19613