

FILED

JUN 14 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Nos. 313352-III

COURT OF APPEALS, DIVISION III,
STATE OF WASHINGTON

State of Washington Ex Rel

Paulina Coronado,

Respondent,

v.

Eric Keith Lampkin

Appellant

BRIEF OF RESPONDENT

RICHARD G. WERNETTE
WSBA 15911
Attorney for Respondent

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Walla Walla, Washington 99362
(509) 525-5090 Fax (509) 529-9277

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I. RESPONDENT'S FACTUAL AND PROCEDURAL HISTORY

The trial court's January 12, 2011, child support order provides that the parents shall pay for college support with the amount to be determined once college cost information is available. CP8.

On February 24, 2012, the Respondent Paulina Coronado filed her summons and petition for modification of child support requesting the establishment of college support for the parties' son, Xavier. CP20-24. Ms. Coronado requested that Mr. Lampkin's child support obligation be paid to her because the college cost was primarily being paid by her through substantial parent educational loans. CP24.

Ms. Coronado filed on February 24, 2012, a detailed supporting declaration with numerous attached supporting documentation. CP25-78. Ms. Coronado explained that Xavier enrolled at Full Sail University, a recording arts school which offers a Bachelor of Science degree. The university is located in Winter Park, Florida. Ms. Coronado explained that the university is well known in the entertainment industry. CP26. She attached information from the school generally describing the university and its program. CP26, CP29-31.

Xavier enrolled for the July 2011 term, but initially his classes were on-line so he could continue to live with his mother in Walla Walla.

CP26. Beginning the Fall of 2011, he began living in Winter Park, Florida to continue his classes. CP26.

The university has an expedited instructional schedule of 88 weeks with 133 credit hours. CP26, 34. Full Sail University has no on campus housing. Xavier's graduation was expected in June 2014 with a Bachelor of Science degree in Recording Arts. CP26. FN¹

Total direct college cost was \$74,630. CP27, 40. The payments required were not equalized during the three academic years. CP27, 40. The payments were heavily weighted in the first year, \$47,470. CP40. Ms. Coronado borrowed \$37,870 by direct parent loan for the first year alone. CP27, 40.

The total cost of college for three academic years was estimated at \$153,291 (CP27, 40) broken down as follows:

\$ 94,239	Total estimated net financial aid mostly through loans by mother and student
\$ 19,684	Year one stipend for living expenses
\$ 19,684	Year two estimated stipend for living expenses
<u>\$ 19,684</u>	Year three estimated stipend for living expenses
\$ 153,291	TOTAL COST THREE ACADEMIC YEARS

CP27.

¹ Ms. Coronado's February 24, 2012, declaration indicated probably by drafting error a June 2013 graduation. CP26. It was a three year program: 2011/2012, 2012/2013, and 2013/2014. Graduation in June 2014.

Consistent with her petition, she asked that Mr. Lampkin pay one-third of the college expense, she would pay one-third expense, and Xavier would pay one-third. The parties' proportionate income arguably should have required Mr. Lampkin to pay more; he earned 58% of the combined income while Ms. Coronado earned 42%. CP99 (by incomes assigned). Because Ms. Coronado had loans payable over time and to offer Mr. Lampkin the same flexibility even though he refused to provide any support through loans, Ms. Coronado requested that Mr. Lampkin's share be paid over 60 months at \$851 per month. CP27-28. This was not for five years of college, but rather paying for three years of college over a five year time period as a courtesy to Mr. Lampkin. Counsel for Ms. Coronado at oral argument offered Mr. Lampkin the opportunity to pay the school direct, but it would have to be paid in the remaining two and half years. RP5-6.

On May 7, 2012, the matter was argued before the trial court. RP1-16. Ms. Coronado's counsel submitted a proposed order to Mr. Lampkin's attorney by August 3, 2012, e-mail. CP95. Receiving no timely response and as per local court rule, Ms. Coronado's counsel submitted the proposed order directly to the trial court by August 20, 2012, letter. CP96. Mr. Lampkin chose not to respond. Accordingly,

the trial court entered a college support order on August 21, 2012. CP97-107.

The August 21, 2012, college support order established Mr. Lampkin's net monthly income at approximately \$3,000 (father has refused to submit any income verification by way of pay stub or tax return). The court found Ms. Coronado's net income at \$2,200. CP99. By simple math, father's estimated monthly net income was 58% while mother's proportionate share was 42%. The support amount was set at \$851 per month. CP100. Mr. Lampkin's proportionate share of uninsured medical expenses was set consistent at 58%. CP106.

The August 21, 2012, Order contains specific factual findings:

1. That the court has considered the factors in RCW 26.19.090(2). See FN² See also RP14-16.
2. That the child is enrolled in an accredited college, Full Sail University, located in Winter Park, Florida. Full Sail University is a well-known university in the entertainment industry.
3. That the child is currently enrolled in an accelerated three year program to obtain his Bachelor's Degree. He enrolled effective

² RCW 26.19.090(2) provides: 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 children when the parents were together; the child's prospects, desires, aptitudes, abilities or disabilities; the nature of the post-secondary educational 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.

June 27, 2011 commencing the July 2011 term and continues his school currently.

4. The payments and expenses of this university are not equalized during the three years. The cost is heavily weighted in year 1. The total cost for year 1 including stipend for living expenses is \$113,923. Year two \$19,684. Year three \$19,684. Total College Cost \$153,291. Father's proportionate share is one-third, \$51,097.
5. Mother has obtained loans for the majority of the college cost. Son has received Pell Grants and some student loans. Mother has agreed that Father may pay his proportionate share of college cost over 60 months to make it more affordable to him. Mother's loan payment terms will allow her to make monthly payments over a period of years. The college demands payment each school term and that cost for school year 2011/2012 has already been paid by mother and son. Father to date has contributed zero. It is not practical to expect the Father to be able to pay directly to the college his full share for three years in the remaining two years of school. With the son's agreement as noted by his signature below, father's share of college cost shall be paid to the mother with mother and son then agreeing as to any proportionate partial reimbursement among each other.

CP106-107. Xavier, now an adult, approved the order. CP107.

On August 31, 2012, Mr. Lampkin filed his motion for reconsideration. CP122-123. On September 20, 2012, Ms. Coronado filed a reply declaration as allowed per CR51(c). CP151-171. The trial court by October 15, 2012, letter denied the father's motions. CP182.

Father's attorney submitted a proposed order denying Mr. Lampkin's motions by October 19, 2012, letter. CP187.

By October 23, 2012, e-mail to the trial court, mother's counsel advised that there were certain provisions that father had requested that she had no objection (CP183-186) as she noted in her memorandum (CP136-150) and her response (CP177-181). Namely, a child support worksheet, father's access to academic records, school progress information, and conditioned support upon Xavier making normal progress toward his degree. CP183-186.

Counsel for the mother noted being "puzzled why Mr. Johnson (father's attorney) objects to provisions he requested. I can only surmise that he does not want these uncontested provisions in any court order in an attempt to create additional appellate issues when in truth there is no objection to these particular provisions." CP183.

The trial court adopted the uncontested provisions by order on November 16, 2012, partially granting father's motion for reconsideration and to amend the findings and denying other certain relief. CP191-198. The father's notice of appeal followed.

II. ARGUMENT

A. Standard of Review – Appellant accurately describes the standard of review as abuse of discretion, a very high standard.

B. The trial court was not under an obligation to consider the factors set forth in RCW 26.09.090(2) and even it was, the court did so.

First, the decision as to whether to order college support had already been decided with the January 12, 2011, child support order: “the parents shall pay for the post-secondary educational support of the child.” CP8.

The trial court record has numerous references to the father acknowledging that he should pay college support. His only objection was as to the amount and whether he should pay for the first year of college. Father’s counsel in the May 7, 2012, oral argument stated that there was no issue that Mr. Lampkin should contribute toward college support. RP8. Father’s counsel stated that: “the real issue is what is a reasonable amount to pay?” RP11. Father’s counsel stated: “so it is our position that his financial obligation ought to be limited to one-third of the Washington State University in-state tuition . . .” RP13.

RCW 26.19.090(2) only applies when the court is “considering whether to order support for post-secondary education expenses . . .” In that case, the court determines whether the child is in fact dependent and relying upon the parents for the reasonable necessities

of life. Then, the statute directs that the court shall exercise discretion “when determining whether and for how long to award post-secondary educational support” based upon certain enumerated factors. While the Appellant claims the trial court did not consider the factors set forth in RCW 26.19.090(2), the Appellant at the trial court level never argued that the father should not pay college support.

Even if for the sake of argument that the trial court was to consider specifically the factors in RCW 26.19.090, it did so:

1. Dependent Child: In Mr. Lampkin’s Memorandum Re: Petition to Modify Child Support, he states:

Post-secondary support is governed by RCW 26.19.090. In this case the current child support order from January 2011 provides that both parents will contribute to the cost of Xavier’s college education. Accordingly, there is **no** need to discuss whether Xavier is dependent or entitled to the support. Rather, the only issues are how much support is required and how the support will be paid.

CP83 (emphasis added).

2. Once the court determines that the child is dependent, then the subsection describes that the court should exercise discretion in determining whether and for how long to order college support and lists the number of factors:

a) Age of child – Xavier was 18 years of age on March 3, 2011 (CP25) and he was noted as being 19 years of age as of the August 21, 2012, college support order. CP98.

b) Child's needs: Father conceded that he owed college support.

c) Expectations of parties:

While complaining that he did not know the specifics, Mr. Lampkin did admit that he “knew he (Xavier) intended to go to college.” CP9. See also CP91. Xavier says his father knew of his goals. CP155-156.

d) Child's prospects, desires and aptitude and nature of the college education sought:

Ms. Coronado explained Xavier's desire to receive a college education and obtain a specialized degree in the Recording Arts. She provided specific verified information about the college, including expense and college degree information. She provided specific cost and financial aid, including loan information. CP25-78, RP15.

e) Income and Standard of Living: Ms. Coronado submitted a pay stub verifying her income. CP78. Mr. Lampkin

made a self-serving unsupported statement that his income was “approximately \$2,500 per month.” CP92. He refused to provide verification of his income by way of pay stub or tax return. He refused to explain how his net income per month that was set at \$3,457 in the January 12, 2011, child support order (CP5) all of a sudden substantially decreased, even though he was with the same employer. The trial court also in its bench decision touched upon the parent affordability of college and the parties’ incomes. RP15. The court in the August 21, 2012, college support order did establish the parties’ incomes at approximately \$3,000 for the father and \$2,200 for the mother. CP99. A reasonably consistent child support worksheet was attached to the court’s November 16, 2012, order partially granting the father’s motion for reconsideration. CP191-198.

- f) Comparative College Cost: The trial court considered the cost of this university as compared to another type of school. RP15.

The case cited by Appellant, *Marriage of Horner*, 151 Wn.2d 884 (2004) actually supports the validity of the trial court’s findings, even

if it was required to consider the factors set forth in RCW 26.19.090(2). Whether the trial court abused its discretion assuming for sake of argument that the court did have to consider those statutory factors, the abuse of discretion standard is easily met by either the trial court making specific findings of fact on each factor, making oral reference reflecting that he did consider each factor and that there was substantial evidence presented on each factor. *Id.*, at 896-897. Appellant argues in effect that the trial court did not consider the factors in RCW 26.19.090(2) even though the trial court specifically stated it did. The trial court should be granted the respect that it was telling the truth. There was also abundant relevant information in the record that the court relied upon. For example, the detailed information with attached verifying documents contained in Ms. Coronado's December 24, 2012, declaration (CP25-78).

So while the Appellant at the trial court level conceded he should pay child support (at one-third for WSU tuition) and only argued about how much, he now is arguing for remand to the trial court to determine whether college support should in fact be paid. The only question at the trial court level was how much he was to pay. The trial court either explicitly by reference or by the supporting record had all the evidence and support needed for the factors set forth in

RCW 26.19.090(2). However, again Ms. Coronado's position is that the trial court only needed to consider how much college support should be paid.

C. The trial court did make findings as to the parties' income and proportionate share of income.

Appellant complains now as he did at the trial court level that the trial court did not make adequate findings as to the parties' income. Mr. Lampkin refused to provide verification of his income by way of pay stub, tax return or by any other independent verification. The January 12, 2011, child support order found his monthly gross income at \$4,010 and net income at \$3,457. CP5, CP15. His April 19, 2012, declaration makes a self-serving statement that now he earned only \$2,500 net per month from the very same employer just one year later. CP92. Mr. Lampkin refused to provide independent proof or any supporting documentation and refused to explain why his income had supposedly been drastically reduced from the year before. Ms. Coronado, on the other hand, did provide independent verification of her income by way of pay stub. CP78. She explained by narrative that she worked for Walla Walla County at the Recorder's Office and her income had presently decreased

from \$2,658 gross per month to \$1,971 gross because of a mandatory work furlough. From January 1, 2011 through September 30, 2011, her gross year to date only averaged \$1,971 per month. CP26 and her pay stub at CP78. Yet, she proposed and the trial court adopted in the court's August 21, 2012, Order her proposed net monthly income of \$2,200 because the furlough she believed was hopefully only temporary. Again, an attempt to be "fair" to Mr. Lampkin.

The trial court's August 21, 2012, Order established the father's income at approximately \$3000 per month and Ms. Coronado's net income at \$2,200. Simple math results in the proportionate share of 58% for Mr. Lampkin and 42% for Ms. Coronado. This same percentage was set forth in the share of the uninsured medical expenses. CP106. It also needs to be remembered that Mr. Lampkin chose not to object to or propose an alternative order to the court's eventual August 21, 2012, order and whatever argument he had, if any, he waived.

Mr. Lampkin then filed a motion for reconsideration. CP122-123. In his memorandum in support, he complained about the lack of a child support worksheet (CP126) although he made no such objection prior to the August 21, 2012, Order. He

complained about the court finding his income at approximately \$3,000 net per month, but again he had refused to submit independent verification and had not objected prior to the entry of the August 12, 2012, Order.

Ms. Coronado indicated in her memorandum in response to reconsideration request that she had no objection to the court attaching a worksheet which was consistent with the income findings the court had already made. CP137.

Mr. Lampkin then takes a rather bizarre position that although Ms. Coronado agreed to include a child support worksheet, Mr. Lampkin nonetheless objected to the trial court adopting a worksheet. In the November 16, 2012, Order which partially granted the motion for reconsideration, an order that Ms. Coronado's counsel had proposed, the court noted that the child support schedules were advisory and not mandatory per RCW 26.19.090(1), but did adopt the worksheet reasonably consistent with the earlier findings. CP191-198.

While Mr. Lampkin asked the trial court to reconsider not adopting a worksheet, then he complained when it did. If the trial court made an error in the August 21, 2012, Order, it corrected it in the partial granting of Mr. Lampkin's motion for

reconsideration. Mr. Lampkin's argument was frivolous then at the trial court level and remains a frivolous argument.

D. The trial court's pro rata apportionment of the college cost was in Mr. Lampkin's favor.

Mr. Lampkin's proportionate share of income is determined by simple math from the trial court's August 21, 2012, Order to be 58% for him and 42% for Ms. Coronado. Mr. Lampkin has approximate \$3,000 net per month income as compared to Ms. Coronado's \$2,200 net per month. CP99. The same percentage is set forth in the proportionate sharing of the uninsured medical expenses. CP106.

The court attached a worksheet to the November 16, 2012, Order partially granting Mr. Lampkin's motion for reconsideration. CP194-198. The worksheet has Ms. Coronado's income at a lower amount because of her temporary work furlough, but the order that was proposed by Ms. Coronado and that the court adopted on August 21, 2012, actually was to Mr. Lampkin's advantage, the court set Ms. Coronado's income at \$2,200 per month. Ms. Coronado makes no appeal to this obvious advantage to Mr. Lampkin. The worksheet for Mr. Lampkin's income is \$3,553, closer to this income per the

January 12, 2011, child support order. CP5. Without any independent income verification for Mr. Lampkin, the August 21, 2012, Order set his net income at approximately \$3,000. He provided no alternative order or argument against that amount until after the order was entered upon the motion for reconsideration. Mr. Lampkin should not be allowed to complain about the trial court's finding which works to his advantage while at the same time refusing to provide independent supporting documentation of his income.

Mr. Lampkin, Ms. Coronado, and the child were each ordered to pay one-third (33%) of the college costs. Mr. Lampkin's share is arguably less than what it should have been based on his higher proportionate share of income, but the one-third allocation obviously works to his advantage and Ms. Coronado did not take exception to it. If the child pays 33%, then arguably Mr. Lampkin should pay 58% of the remaining two-thirds (38%) while Ms. Coronado arguably should pay 42% of the remaining two-thirds (28%). In addition, Mr. Lampkin agreed to his one-third share, but wanted it based upon WSU tuition. RP13. He cannot propose his share be one-third at the trial court and now argue on appeal to use a different percentage.

Because of the many factors within the discretion of the court, including the location and cost of college and the parties' incomes, Mr. Lampkin's court ordered share of 33% is reasonable and within the sound discretion of the court. It obviously works to Mr. Lampkin's advantage that he was not ordered to pay his proportionate share of 38% of the total college costs. Again, an example of Ms. Coronado attempting to be fair to no avail.

E. The factual findings by the trial court are supported by the record.

It is incredulous that Mr. Lampkin complains that the court did not have sufficient information to make a finding on Mr. Lampkin's approximate net income of \$3,000 while at the same time refusing to provide what could have been easily submitted proof by way of pay stub or tax returns. Given Mr. Lampkin's higher income just the year before, his refusal to provide proof of current income, his working for the same employer, and the lack of a credible explanation for the claimed drastic reduction in income, the trial court was well within its discretion to find his income at "approximately" \$3,000.

The \$4,010 monthly gross of the November 16, 2012, worksheet is identical to the gross income contained in the January 12, 2011, child support order for Mr. Lampkin. CP15. Mr. Lampkin's net income is slightly different in the worksheet because of the tax calculation deductions. Mr. Lampkin could easily have provided the trial court with independent proof of his income to provide more certainty to the calculation of his income, but despite months of opportunity, he refused to do so. The 58% proportionate share of the August 21, 2012, order works to his advantage and in any scenario is reasonable particularly for Mr. Lampkin.

Mr. Lampkin again erroneously claims Ms. Coronado has not provided "supporting documentation of her income." Appellant Brief, page 18. Ms. Coronado's February 24, 2012, declaration attached a copy of her September 30, 2011, pay stub. CP78. Her gross year to date was noted at \$17,736.78, thus her average monthly gross was \$1,971. However, as she explained in her narrative (CP26), the drop of income was caused by a mandatory furlough. Ms. Coronado and her counsel proposed \$2,200 because it was thought that the work furlough might be temporary and Ms. Coronado sought to be "fair" to Mr. Lampkin,

obviously something unappreciated by Mr. Lampkin. Mr. Lampkin then complains that Ms. Coronado did not provide “additional information on her income.” Appellant Brief, page 18. This from a man who provided no proof at any time.

The child support worksheet is advisory, not mandatory in determining college support. RCW 26.09.090(4). The trial court did consider the factors of RCW 26.19.090(2) as noted in Respondent’s Brief above even though arguably the court may not have needed to make those findings given that the only issue before the court was the amount of college support, not whether it was going to be paid. Mr. Lampkin submitted no income verification, he submitted no worksheet, and he submitted no alternative proposed child support order. Mr. Lampkin is not in a position now to complain about the court’s findings and orders when he made no objection or any alternatives prior to the August 21, 2012, court order. He is taking pot shots at the trial court’s orders, but gave the trial court no alternatives.

Mr. Lampkin’s obligation is for the “cost” of the accelerated three year college degree program, absent a showing of a substantial change of circumstances. CP102. The child support order in paragraph 3.23 (5) provides that Mr. Lampkin’s

payment of the three year college cost could be spread out over five years. CP107. This a proposal made by Ms. Coronado to allow Mr. Lampkin more flexibility on payment and to spread out his payments. Mr. Lampkin could have been required to pay the full cost over the remaining two to two and one half years, but Ms. Coronado was able to obtain significant parent loans spread over a time period for payment. If Mr. Lampkin complains about the five year payment schedule, then Ms. Coronado will gladly accept Mr. Lampkin's immediate lump sum payment in full of his share.

Mr. Lampkin complains about the August 21, 2012, alternate tax exemption (CP102) which is exactly the same as the January 12, 2011, child support order (CP8). Ms. Coronado did not ask to modify that provision and neither did Mr. Lampkin.

It is again incredulous that Mr. Lampkin complains about the requirement that Mr. Lampkin provides health insurance coverage for the child while at the same time refusing to provide the trial court with any independent documentation as to his health insurance. Mr. Lampkin had health insurance for the child pursuant to the January 12, 2011, child support order. CP9. He worked for the same employer in 2012. Ms. Coronado in her

petition asked that Mr. Lampkin continue with insurance coverage. CP24. It is reasonable for the court to conclude that Mr. Lampkin did have continued health insurance coverage available particularly given that Mr. Lampkin refused to provide verification one way or the other. If all of a sudden Mr. Lampkin's employer dropped insurance from 2011 to 2012, all Mr. Lampkin had to do was provide some independent supporting documentation. He refused.

The 58% / 42% proportionate share of the income is per the income found by the court in the August 21, 2012, Order. Yes, the parties, the trial court, and this appellate court can do simple math to arrive at the proportionate share of income.

F. It was not feasible under the circumstances to have the father pay support directly to the college.

The matter was argued before the trial court on May 7, 2012, and by the time of the August 21, 2012, entry of the child support order, Xavier had already completed his first year of school for 2011/2012. CP107. The college had already been paid for school year 2011/2012 as one would expect the college to require. Mother and son paid for that first year through loans and

small grants to the son. CP25-78. Father's total share of three years of college was \$51,097 or \$17,000 per year. CP107.

In response to Mr. Lampkin's motion for reconsideration, Ms. Coronado indicated that if the order was to be substantially redone, then Mr. Lampkin's share should be increased to 58% of the remaining two-thirds of college costs after the child's contribution of one-third. CP141. Father's increased share could be increased to \$59,160 and he could pay his share in full in the remaining two years of school. CP141.

Ms. Coronado's counsel at the May 7, 2012, hearing indicated the willingness to be flexible concerning how Mr. Lampkin was to pay his share of college costs. RP5. Xavier was about half way through his first year of the accelerated three year program. While Ms. Coronado and to a lesser extent Xavier obtained loans to pay in full the cost for the first year, the cost of the entire accelerated three year program was heavily weighted in the first year. Mr. Lampkin could have obtained a parent loan just as easily as Ms. Coronado and paid his full share. However, Ms. Coronado offered to spread out Mr. Lampkin's payments if he desired so that he need not pay in full over the remaining two or two and one half years. RP5.

Ms. Coronado's counsel at the May 7, 2012, argument stated:

Now, if he wants to pay it for two and a half years until he finishes school, you know, that's fine. We are trying to make it a little bit easier on his budget.

RP5.

Ms. Coronado had already borrowed and paid the school \$37,870 for the first year alone. CP20, 163-164. Xavier had borrowed and paid no less than \$16,000. CP167-168. It made no sense for Mr. Lampkin to pay the school for the first year. The first year had already been paid primarily by mother and to a lesser extent, Xavier. The father needed to **reimburse** the mother and son for their payment in full of the father's share.

Universities do not accept I.O.U.s. Either the college is paid in full or the child does not go to school. Full Sail University had an accelerated three year program for a Bachelor's Degree. The cost was heavily weighted in the first year. CP40. \$47,000 was needed in loans and then a small grant for year one alone, \$37,870 of which came from mother's loan. CP40.

It made no sense for Mr. Lampkin to pay his first year share to the college, the first year was already paid by mother and

the son to a lesser extent. Mother and son needed to put together a plan to finance the entire three year program. Mr. Lampkin was not going to pay in full his share for year one, let alone for years two and three together although he was offered the opportunity to do so. Mother and son had to put together a financial plan to pay for Xavier's college or otherwise Xavier would not be able to attend college.

Father complains about being given the opportunity to pay his share of three years of college over a five year time period, yet, he **never** offered to reimburse mother and son for their payment in full of father's share for year one. Mr. Lampkin **never** proposed an order to have him pay in full his share for years two and three directly to the school. It was up to Ms. Coronado and Xavier. Mother and son would have welcomed Mr. Lampkin's payment in full of years two and three. Mr. Lampkin could have taken a parent's school loan out just as Ms. Coronado did and sacrificed for her son, Mr. Lampkin had no intention to do so and never offered to do so. It was left to Ms. Coronado and Xavier to develop a plan to finance this three year program.

It was for all these reasons that direct payment to the school of the father's share was "not feasible." RCW 26.19.090(6).

Ms. Coronado and Xavier would have welcomed Mr. Lampkin immediately reimbursing them for his share of year one. They would have welcomed a commitment for him to pay in full directly to the school or Xavier the father's share for years two and three. Mr. Lampkin was never part of the solution, he never bothered to even propose an alternative order to the one entered August 21, 2012. It was left to Ms. Coronado, Xavier and the trial court to figure it out and allow this talented young man to follow and obtain his dream.

Mr. Lampkin complains that the payment should have been made to the child. First, he **never** offered to reimburse the child or mother for their first year payment of the father's share. In addition, mother was the person who primarily paid for year one, not Xavier. She borrowed \$37,870 of the first year need of \$47,000. CP65.

The trial court was faced with the unique circumstance and problem to be solved in that the father in effect was to reimburse mother and son for their payment of the father's share

of direct school costs and living expenses. Father never recognized the fact that for year one particularly, it is a matter of reimbursement. The court fashioned the only practical remedy it could for reimbursement, that is for Mr. Lampkin to pay Ms. Coronado with the adult son's agreement.

The August 21, 2012, Order noted:

With the son's agreement as noted by his signature below, father's share of college costs shall be paid to the mother with mother and son then agreeing as to any proportionate partial reimbursement among each other.

CP107. In effect then, the father was paying son through the mother. In addition, the primary reimbursement was owed to the mother because she was primarily financing the son's education.

G. Father not wanting to pay his share for the first year of college.

As the trial court noted, “. . . it is disingenuous [for Mr. Lampkin] to argue he shouldn't be responsible for the first eleven months [of college].” RP16.

Xavier disputes father's claim that it was a total shock and surprise to the father that Xavier wanted to attend college and Full Sail University. CP155. Regardless, there is no prejudice to Mr. Lampkin because of Ms. Coronado filing her petition to

establish college support after the school year 2011/2012 had begun. He claims it is not fair to “. . . be forced to pay for college schooling that occurred prior to entry of an order establishing his obligation. . .” Appellant’s Brief, page 28. What Mr. Lampkin neglects to mention is that he knew all along he was going to pay for college support ever since the January 12, 2011, Order said so. CP8. It was only a matter for the court to determine how much he was going to pay. Mr. Lampkin was free to argue at the trial court, as he did, that his share should be limited to one-third of in-state WSU tuition. RP13. The court denied the request and ordered the share of the actual college cost. Mr. Lampkin was also free to propose his own alternative order of child support to the one eventually entered on August 21, 2012, he never did so.

On reconsideration, Mr. Lampkin was able to make every single argument that he is making presently without prejudice. So although the January 12, 2011, ordered provided that he is to contribute to college support, he proposes to the court that he pay nothing for year one. It is an outrageous and frivolous argument saying more about Mr. Lampkin’s mindset than the true merits of the case.

H. The trial court committed no error on the information the court relied upon in denying Mr. Lampkin's motion for reconsideration.

Counsel for Mr. Lampkin continues to misread CR 59(a)(4) and the partial quote provided in Mr. Lampkin's Brief is misleading. CR59(a) provides that a motion for reconsideration "may be granted for any one of the following causes materially effecting the substantial rights" of the party making the motion. CR59(a) then lists the "causes" where a motion for reconsideration should be granted in subsections (1) – (9). The party moving for reconsideration may prevail on that motion if he submits: "(4) newly discovered evidence, material for the party making the application, which they could not without reasonable diligence have discovered and produced at the trial."

CR59(c) does allow the court to "permit reply affidavits." For example, father complains in his August 31, 2012, Memorandum of not being provided proof of his son's academic standing. CP132. At the time of the court's bench decision on May 7, 2012, Xavier had not completed his first academic year. Ms. Coronado's February 24, 2012, declaration did provide verification from the school of Xavier's enrollment, the taking

out of school loans, and disbursement of those school loans' amount. CP151-171. Given that Xavier was then in his second academic year and proof of that enrollment is needed to continue with the child support obligation, that proof is provided in Ms. Coronado's September 20, 2012, declaration. *Id.* She is also replying in that declaration to the father's argument at the lack of academic grades by providing those academic records through the summer of 2012, which reflected an accumulative GPA of 2.96. *Id.* A September 17, 2012, letter from the university confirms Xavier's enrollment from July 30, 2012, through November 18, 2012, for 15.48 semester credit hours. *Id.*

Ms. Coronado's declaration of September 20, 2012, is in large part simply a reply to the father's Memorandum and supplements the argument set forth in the mother's Memorandum in opposition to the motion for reconsideration.

I. Respondent's request for an award of attorney fees and costs.

Respondent requests an award of reasonable attorney fees and costs against the Appellant as allowed per RCW 26.18.160, (But see *Bell v. Bell*, 101 Wash.App. 366 (2000) Div. I), RCW 26.09.140, RAP 18.1, and other applicable law.

III. CONCLUSION

Much of Mr. Lampkin's claimed errors are frivolous, an attempt to disguise the lack of merit with the quantity of claimed errors. Mr. Lampkin complained about the lack of information for the trial court to determine his income and whether he continued to have health insurance for the child, yet Mr. Lampkin had the sole ability to provide that information and refused. He complains about using a one-third formula, that he asked the trial court to use the same formula, only applying it to an in-state WSU cost. He complains about lack of a worksheet, but when the court on reconsideration grants a request, he objects to the trial court granting what he had requested. He claims that the trial court did not make a pro rata determination of his income, but the trial court clearly determined the income and it is a matter of simple math to determine the percentage. With many of Mr. Lampkin's now claimed errors, he made no objection and presented no alternative orders. An issue not raised at the trial court level is waived. *Pappas vs. Hershberger*, 85 Wn.2d 152 (1975).

Father complains that while he knew he had to pay for college support even before his son graduated from high school,

he does not want to contribute anything toward the first year of his son's college because of a rather ridiculous argument that the petition to set college support was filed after the commencement of the first school year. He claims prejudice, but is unable to adequately describe exactly how he is prejudiced. He did not want to pay anything for year one and wanted to pay one-third for years two and three based upon WSU in-state tuition. The trial court utilized the actual cost of Full Sail University and applied the one-third formula that Mr. Lampkin and Ms. Coronado had requested. On reconsideration, Ms. Coronado indicated that she had no objection to a proportionate sharing of the actual cost of college if that is what Mr. Lampkin wanted, but the one-third formula actually worked to Mr. Lampkin's advantage. Ms. Coronado chose not to appeal a formula that both she and Mr. Lampkin agreed upon.

Ms. Coronado requests that Mr. Lampkin's appeal be denied. Ms. Coronado requests that she be granted reasonable attorney fees and costs against Mr. Lampkin in an amount to be determined per proper procedure.

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Respectfully submitted this 13 day of June, 2013.

A handwritten signature in black ink, appearing to read "Richard G. Wernette", written over a horizontal line.

RICHARD G. WERNETTE, WSBA 15911
Attorney for Respondent

IV. CERTIFICATE OF MAILING

I, Richard G. Wernette, certify that on June 13, 2013, I served upon Appellant a copy of the BRIEF OF RESPONDENT by depositing a copy of the same in the United States Mail, first-class postage prepaid, addressed to respondent's counsel at the following addresses:

Brandon L. Johnson
Minnick • Hayner, P.S.
P.O. Box 1757 / 249 West Alder
Walla Walla, WA 99362

Dated this 13 day of June, 2013, at Walla Walla, Washington.



RICHARD G. WERNETTE, WSBA #15911