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JAN - 9 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 319202-III

IN THE COURT OF APPEALS, DIVISION III,
OF THE STATE OF WASHINGTON

In the Marriage of:

JENNY M. BUCKLEY

Appellant,

v.

JOHN T. BUCKLEY,

Respondent.

BRIEF OF APPELLANT

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III. ASSIGNMENTS OF ERROR

1. The trial court erred in Paragraph 2.2 of the Order of Child Support by adopting the child support worksheets that excluded \$2,526.31 per month from respondent's gross income.

2. The trial court erred in Part 1 of the Washington State Child Support Worksheets by finding respondent's total gross monthly income to be \$7,247.00.

3. The trial court erred in Part 3 of the Washington State Child Support Worksheets by finding respondent's monthly net income to be \$7,247.00.

4. The trial court erred in Part 4 of the Washington State Child Support Worksheets by finding the parties' combined monthly net income to be \$9,402.00.

5. The trial court erred in Part 6 of the Washington State Child Support Worksheets by finding respondent's proportional share of income to be .771 of the parties' net income.

6. The trial court erred in Parts 7 and 9 of the Washington State Child Support Worksheets by finding respondent's basic child support obligation to be \$1,855.00.

7. The trial court erred in Parts 7 and 9 of the Washington State Child Support Worksheets (single child calculation) by finding respondent's basic child support obligation to be \$1,191.00.

8. The trial court erred in Part 15 of the Washington State Child Support Worksheets by finding respondent's gross child support obligation to be \$2,021.00.

9. The trial court erred in Part 15 of the Washington State Child Support Worksheets (single child calculation) by finding respondent's gross child support obligation to be \$1,357.00.

10. The trial court erred in Part 17 of the Washington State Child Support Worksheets by finding respondent's share of the standard calculation to be \$1,805.00.

11. The trial court erred in Part 17 of the Washington State Child Support Worksheets (single child calculation) by finding respondent's share of the standard calculation to be \$1,141.00.

12. The trial court erred in Part 18 of the Washington State Child Support Worksheets by finding 45% of respondent's net income to be \$3,261.00.

13. The trial court erred in Part 19 of the Washington State Child Support Worksheets by finding 25% of respondent's basic support obligation to be \$464.00.

14. The trial court erred in Part 19 of the Washington State Child Support Worksheets (single child calculation) by finding 25% of respondent's basic support obligation to be \$298.00.

15. The trial court erred in Paragraph 3.2 of the Order of Child Support by finding respondent's actual net monthly income to be \$7,247.00.

16. The trial court erred in Paragraph 3.5 of the Order of Child support by order respondent to pay a monthly transfer amount of \$1,805.00.

17. The trial court erred in Paragraph 3.5 of the Order of Child support by order respondent to pay commencing in July, 2014 support for one child in the amount of \$1,141.00 per month pursuant to the Washington State Child Support Worksheets (single child calculation).

18. The trial court erred in Paragraph 3.6 of the Order of Child support by finding a standard calculation of \$1,805.00 per month, with \$1,141.00 per month after July, 2014.

19. The trial court erred in Paragraph 3.19 of the Order of Child Support by ordering respondent to pay 77.1% of uninsured medical expenses and appellant to pay 22.9% of such expenses.

20. The trial court erred in Paragraph 3.23 of the Order of child support by ordering that each party shall pay their own attorney and accountant fees.

21. The trial court erred in denying appellant's motion for reconsideration of the trial court's ruling on the "Buschini Income".

22. The trial court erred in denying appellant's motion for reconsideration of the trial court's ruling denying accountant fees.

IV. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. Do RCW 26.19.070 (1), (3) or (4) allow any exclusion from gross income for purposes of child support? (Pertains to Assignments of Error Nos. 1-19, 21).
2. Does a court commit reversible error by failing to consider an item of income not excluded by RCW 26.19.070? (Pertains to Assignments of Error Nos. 1-19, 21).
3. Did the trial court's recognition of a deduction from respondent's gross income for the acquisition costs of a portfolio of business conflict with the legislative purposes announced in RCW 26.19.001? (Pertains to Assignments of Error Nos. 1-19, 21).
4. Do respondent's actions in deducting the entire acquisition costs of the Buschini Portfolio in 2012 violate the "*matching rule*", a tenet of Generally Accepted Accounting Principles in the United States? (Pertains to Assignments of Error Nos. 1-19, 21).

V. STATEMENT OF THE CASE

Appellant ("Jenny") and Respondent ("John") have two sons. CP 132. An Order of Child Support that provides for John's child support obligation to be readjusted periodically pursuant to statute. CP 135-36.

Jenny filed a motion to re-adjust child support. CP 14-15. Both parties presented testimony through certified public accountants. Jenny presented

testimony via Kristal Hassler. CP 16-20, 102-110, 90-92, 156-63. John presented testimony via David Hale. CP 111-13.

On June 3, 2013 the Trial Court filed a memorandum opinion that framed the issue being appealed as follows:

The primary issues presented are: first, whether the up-front payments made by the Respondent for the purchase of Dephine Buschini's portfolio of clients can be deducted from the amount of his gross income from same, or whether the cost thereof should be amortized over a longer term as is generally done in a business acquisition. . . ." CP 129.

John is a self-employed owner of Buckley Financial Services. CP 73. In 2010, John purchased a "book of business" from Dephine Buschini. CP 62. The purchase price was different percentages from Buschini's clients. CP 293.

Believing that he paid too much income tax, in 2012 , John had his contract with Buschini re-written so that instead of the correct "*book of business*" designation what he purchased from Buschini termed a "*consulting expense*". CP 104-05. This designation permitted John to deduct (i.e. "*expense*") the entire amount paid to Buschini in 2012. CP 104-05. In turn, these additional "*expenses*" reduced John's income which, in turn, reduced his income for child support purposes. CP 106.

Jenny's accountant, Ms. Hassler, provided the following in her declaration re: John's "*book of business*" to "*consulting expense*" change re: Buschini from 2011 to 2012:

Businesses and business assets are acquired and financed in many different ways. To ensure equitable treatment, the “matching rule” – a tenet of Generally Accepted Account Principles in the United State – states that one should recognized expenses within the same period in which revenues related to those expenses are recognized. That is why business assets are depreciated or amortized over a number of years rather than being expensed in one year. In the case of Mr. Buckley’s payments to D&J Buschini, Mr. Buckley is paying for an asset that should be depreciated or amortized, not expensed.

The cash outlay experienced by Mr. Buckley related to the acquisition of this asset is no different than any other business purchasing a large asset. The construct of his purchase contract should not be allowed to alter the treatment of the transaction. If, for example, Mr. Buckley had taken a loan from the bank to pay 100% of the cost of the acquisition upfront – rather than making payments to D&J Buschini – Mr. Buckley would in no way be able to claim the cost of that acquisition as an expense in the year of purchase. Instead, Mr. Buckley would depreciate or amortize the cost of the asset over its “useful life” in order to recognize the expense in the same period as the expected revenue derived from the asset. Furthermore, Mr. Buckley would not be able to claim his debt repayments as an expense either – he would only recognize the depreciation of the asset as an expense. Similarly, had Mr. Buckley purchased some very expensive business-related computer hardware and software and had structured his purchase such that he paid the vendor over a three-year period rather than paying the full cost upfront, Mr. Buckley would still depreciate the equipment over the course of its expected useful life and would not be able to reduce his income by the purchase price over a short period of one, two, or three years.

The proper treatment of a normal business or business asset acquisition is to depreciate or amortize the asset. Therefore, I recommend that the cash

payments made to D&J Buschini be ignored for the purpose of calculating Mr. Buckley's income, and that the depreciation or amortization of the asset be allowed as an ordinary business expense in this and future years."

CP 91-92.

John stated the following in his declaration re: Buschini income:

One of the issues is whether or not the "Buschini" income is really income which should be included for purposes of the child support calculation.

The Buschini issue is essentially this: In 2010, Buckley Investment Group, LLC, made an agreement to purchase the "book of business" from Delphine Buschini. In order to acquire same, I agreed to pay her 60% of what I received from her accounts for the first year. The second year would be 50% and the third year would be 40%. Filed by sealed financial document herein is a copy of the first agreement entered into for that purpose (delineated with a number 1 at the top right hand corner).

Unfortunately, in an effort to save some money, I put this agreement together myself. I later found out that the structure of the agreement was such that the IRS required that I claim all of the income from the Buschini accounts as my income and I could not expense that 60% that I had to pay her. In other words, if I were to receive \$100 one month from the Buschini accounts, I would not get to keep \$100. I would keep \$40 and pay Mrs. Buschini \$60. To make it worse, 30% of the portion that we bill on the Buschini accounts is shared with Dave Masten, an individual in our office. Accordingly, I did not even receive the total of \$40 per month.

When I understood the error of my ways, I went to David Rose and a new contract was written. That new contract is also filed under seal herein and delineated with number 2 at the top right hand corner and further delineated as a "Consulting Agreement". As the court can see from the new agreement, it

didn't change the percentages but the IRS now allows the deduction (payment to Buschini) as a business expense and not something that I have to claim as income.

I am asking the court to disregard the amount that I had to pay to Mrs. Buschini that first year (2011). My ex-wife and her accountant apparently want to include that amount because the IRS has required that I include it. As the court can see, it was a mistake on my part and, even more importantly, I never had those funds in my pocket to begin with. In other words, I may have received the income but I had to immediately pay it to Mrs. Buschini and it was not at my disposal. That is one of the reasons why there is a big disparity in income between our worksheets and their worksheets.

The other reason I would ask that the court disregard (other than the fact I never had use of these funds) is that this was a one time event and will never occur again." CP 104-05.

Ms. Hassler responded to John's statement above by filing a supplemental declaration that stated the following:

Mr. Buckley asserts that he should not be required to claim as income the income that he received and then paid out to purchase a business asset – the asset in question being a “book of business” referred to as “Buschini”. Mr. Buckley asserts that the construct of the legal contract between him and Mrs. Buschini prevented him from being able to expense the cost of the asset in question in 2011, while a restructured agreement in 2012 allows him to expense the same asset acquisition costs under the guise of a “consulting expense”.

Mr. Buckley's declaration in the first indication I have had that the “Buschini payments” are being expensed by Buckley Investment Group in 2012. In a prior letter written by me to you, dated February 21st, 2013, I estimated Mr. Buckley's net income as it should be calculated for child support purposes in

2012 at \$96,316.82 annually, or \$8,026.40 per month. I now believe that estimate was in error, as it erroneously included the “Buschini payments” as an expense for Buckley Investment Group, thereby reducing Mr. Buckley’s income by one-half of that expense. After further review, I now see that Buckley Investment Group has claimed a significant expense for consulting services in 2012 which is – apparently – the amount paid by Buckley Investment Group to Mrs. Buschini in 2012 as payment for the “book of business” acquired in 2011. To be clear, this payment for a business asset not payment for any services actually rendered to Buckley Investment Group by Mrs. Bushini.

Of the amount expensed as a “consulting expense” by Buckley Investment Group in 2012, I believe one-half – or \$20,962.87 - should be added back to Mr. Buckley’s income in 2012. As evidence of this amount, I have attached a copy of Buckley Investment Group’s 2012 income statement, as well as an updated spreadsheet showing my calculation of Mr. Buckley’s income. I now estimate Mr. Buckley’s net income as it should be calculated for child support purposes in 2012 at \$117,279.69 annually, or \$9,773.31 per month.

Business and business assets are acquired and financed in many different ways. To ensure equitable treatment, the “matching rule” – a tenet of Generally Accepted Accounting principles in the United States – states that one should recognize expenses within the same period in which revenues related to those expenses are recognized. That is why business assets are depreciated or amortized over a number of years rather than being expensed in one year. In the case of Mr. Buckley’s payments to D&J Buschini, Mr. Buckley is paying for an asset that should be amortized over its useful life, not expensed.

The cash outlay experienced by Mr. Buckley related to the acquisition of this asset is no different than any other business purchasing a large asset. The construct of his purchase contract should not be

allowed to alter the treatment of the transaction. If, for example, Mr. Buckley had taken a loan from the bank to pay 100% of the cost of the acquisition upfront – rather than making payments to D&J Buschini over a three-year period – Mr. Buckley would in no way be able to claim the cost of that acquisition as an expense in the year of purchase. Instead, Mr. Buckley would depreciate or amortize the cost of the asset over its “useful life” in order to recognize the expense in the same period as the expected revenue derived from the asset. Furthermore, Mr. Buckley would not be able to claim his debt repayments as an expense either – he would only recognize the depreciation of the asset as an expense. Similarly, had Mr. Buckley purchased some very expensive business-related computer hardware and had he structured his purchase such that he paid the vendor over a three-year period rather than paying the full cost up-front, Mr. Buckley would still depreciate the equipment over the course of, its expected useful life and would not be able to reduce his income by the purchase price over a short period of one, two, or three years.

The proper treatment of a normal business asset acquisition is to depreciate or amortize the asset over its useful life. Therefore, I recommend that the cash payments made to D&J Buschini in 2011, 2012, and 2013 be capitalized and amortized over a 15 year period for the purpose of calculating Mr. Buckley’s income, and that the amortization of the asset be allowed as an ordinary business expense to reduce his income in this and future years. CP 106-07.

In its memorandum decision of May 31, 2013, the Trial Court ruled as follows:

Considering all of the circumstances, the Court finds that the cost of acquiring the Buschini portfolio may properly be subtracted from the gross profit from the Buschini income. Regardless of the artfulness of the drafting of the initial contract, or the

amended contract therefor and the IRS's treatment of same, the dollars paid to the Buschini estate were never really available to the Respondent and should not be considered in determining his income for child support purposes." CP 130.

Instead of average monthly gross income \$9,773.31 as proposed by Ms. Hassler, in its Order of Child Support entered on June 24, 2013, the Court adopted child support worksheets setting forth average monthly gross income for John in the amount of \$7,247. CP 131-32; CP 140-49. Page 4 of the child support worksheets approved by the court states that John's income was calculated as follows: "*Father's income from Kristal Hassler calculations minus the Buschini payments. Average of 2011 and 2012 income per attached spreadsheet.*" CP 143. The trial court thereby miscalculated John's gross monthly income by \$2,526.31 per month.

On June 27, 2013, 2013, Jenny filed a motion for reconsideration of the Order of Child Support. CP 154-55. On August 9, 2013, the trial court denied Jenny's motion for reconsideration of its ruling on the "*Buschini Income*". CP 173;

On September 9, 2013, Jenny filed a Notice of Appeal from the Order of Child Support and the Order Denying Reconsideration.

VI. ARGUMENT

A. Standards of review.

The standard of review of the trial court's findings of fact and conclusion of law is whether the findings of fact are supported by substantial evidence and whether the findings of fact support the conclusions of law. *In re LaBelle*, 107 Wash. 2d 196, 728 P.2d 138 (1986).

Review of the trial court's Order of Child Support is governed by an abuse of discretion standard. *In re Marriage of Pollard*, 99 Wash. App. 48, 52, 991 P.2d 1201 (2000). A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *In re Marriage of Littlefield*, 133 Wash. 2d 39, 46, 940 P.2d 1362 (1997) As stated in *Marriage of Littlefield*:

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.

133 Wn.2d at 47).

See also In re Marriage of Horner, 151 Wash. 2d 884, 894, 93 P.3d 124 (2004).

The trial court also abuses its discretion when it exercises its discretion contrary to the applicable law. *In re Jannot*, 110 Wash. App. 16, 22, 37 P.3d 1265 (2002) *aff'd sub nom. In re Parentage of Jannot*, 149 Wash. 2d 123, 65 P.3d 664 (2003).

Issues of law are reviewed *de novo*. *In re Marriage of Herridge*, 169 Wash. App. 290, 297, 279 P.3d 956 (2012).

B. The trial court erred in deducting respondent's acquisition costs for the Buschini Portfolio from respondent's 2012 gross income.

Error is assigned to Paragraph 2.2 of the Order of Child Support and the Child Support Worksheets. CP 131, 140-49. The trial court found John's gross income to be \$7,247.00. *Id.* In its memorandum decision of May 31, 2013, the trial court determined that the cost of acquiring the book of business from Dephine Buschini from may be deducted from the gross profit from the income from the portfolio. “[T]he Court finds that the cost of acquiring the Buschini portfolio may property be subtracted from the gross profit from the Buschini income.” CP 130.

RCW 26.19.071 (1) requires consideration of all income of each parent's household: “*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...*”

Calculation of gross income for purposes of child support is governed by RCW 26.19.070 (3):

(3) Income sources included in gross monthly income.
Except as specifically excluded in subsection (4) of this section, monthly gross income shall include income from any source,

including:

- (a) Salaries;
- (b) Wages;
- (c) Commissions;
- (d) Deferred compensation;
- (e) Overtime, except as excluded for income in subsection (4) (i) of this section;
- (f) Contract-related benefits;
- (g) Income from second jobs, except as excluded for income in subsection (4) (i) of this section;
- (h) Dividends;
- (i) Interest;
- (j) Trust income;
- (k) Severance pay;
- (l) Annuities;
- (m) Capital gains;
- (n) Pension retirement benefits;
- (o) Workers' compensation;
- (p) Unemployment benefits;
- (q) Maintenance actually received;
- (r) Bonuses;
- (s) Social security benefits;
- (t) Disability insurance benefits; and
- (u) Income from self-employment, rent, royalties, contracts, proprietorship of a business, or joint ownership of a partnership or closely held corporation.

(4) Income sources excluded from gross monthly income.

The following income and resources shall be disclosed but shall not be included in gross income:

- (a) Income of a new spouse or new domestic partner or income of other adults in the household;
- (b) Child support received from other relationships;
- (c) Gifts and prizes;
- (d) Temporary assistance for needy families;
- (e) Supplemental security income;
- (f) Aged, blind, or disabled assistance benefits;
- (g) Pregnant women assistance benefits;
- (h) Food stamps; and
- (i) Overtime or income from second jobs beyond forty hours per week averaged over a twelve-month period worked to provide for a current family's needs, to retire past relationship debts, or to retire child support debt, when the court finds the income will cease when the party has paid off his or her debts.

Receipt of income and resources from temporary assistance for needy families, supplemental security income, aged, blind, or disabled assistance benefits, and food stamps shall not be a reason to deviate from the standard calculation.

Neither RCW 26.19.070 (1) or RCW 26.19.070 (3), (4) authorize the deduction of any item of expense from gross income. The trial court's deduction of John's acquisition cost of the Buschini Portfolio from his gross income thus finds no support in RCW 26.19.071 (1), (3) or (4).

It is reversible error for a court to fail to consider an item of income not excluded by the statute. *In re Marriage of Bucklin*, 70 Wash. App. 837, 840, 855 P.2d 1197 (1993). By allowing a deduction from respondent's gross income for the acquisition cost of the Buschini Portfolio, the trial court thereby permitted a corresponding reduction in John's gross income without any statutory support. Without that deduction, John's gross income should have been \$9,773.31. CP 124-128. The trial court found John's monthly gross income with the deduction for acquisition costs to be \$7,247.00. The trial court thereby erred by failing to include an additional \$2,526.31 in John's gross income.

The trial court concluded that the dollars paid to the Buschini Estate were never really available to John and should not be considered in determining his income for child support purposes. CP 130. Nothing in RCW 26.19.070 (1), (3) or (4) authorized the trial court to make such a conclusion. Nor did the trial court identify any authority to support its conclusion.

The trial court's recognition of a deduction from John's gross income for the acquisition costs of the Buschini Portfolio also cannot be reconciled with the

legislative intent underlying RCW Chapter 26.19. RCW 26.19.001 provides, in pertinent part, as follows:

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...

By allowing John to deduct from his gross income the acquisition costs of the Buschini Portfolio, the trial court allowed him to shelter over \$2,500.00 per month from his gross income. Such a result cannot be reconciled with the Legislature's intent 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. Further, by allowing the deduction, the trial court thereby allowed John to artificially lower his gross income, thereby undermining the Legislature's intent that the child support obligation should be equitably apportioned between the parents.

It will not serve for John to argue that the acquisition costs for the Buschini Portfolio are deductible from net income under RCW 26.19.071 (5) (h). The fact that certain items may be deducted from net income provides no authority to make such deductions from gross income under RCW 26.19.071 (1), (3) or (4). Moreover, the Child Support Worksheets approved by the trial court made no such deductions to achieve net income. CP 140, 144.

To the extent that RCW 26.19.071 (5) (h) has any application here, that section authorizes only “*normal business expenses*”. John’s actions in deducting the entire acquisition costs of the Buschini Portfolio in 2012 do not qualify as a normal business expense. Instead, such actions violate the “*matching rule*”, a tenet of Generally Accepted Accounting Principles in the United States. CP 107.

Nor does the fact that Federal tax law may allow John to deduct the entire amount of acquisition costs in one year require the characterization of those costs as normal business expenses for purposes of child support. *In re Marriage of Mull*, 61 Wash. App. 715, 722, 812 P.2d 125 (1991) (“[W]hether or not such expenditures may be deductible for federal income tax purposes does not control whether they are deductible for purposes of child support calculations.”).

John’s decision to expense the acquisition costs of the Buschini Portfolio in one year produced a similar effect as an election by a taxpayer under 26 U.S.C.A. § 179 (West) to deduct certain depreciable property as an expense which is not chargeable to capital account. In this regard, courts refuse to consider a § 179 deduction or other accelerated depreciation when calculating income for child support. *See Asfaw v. Woldberhan*, 55 Cal. Rptr. 3d 323 (Ca. App. 2007); *Reid v. Reid*, 121 Idaho 15, 822 P.2d 534 (1992); *Baker v. Baker*, 183 Ariz. 70, 900 P.2d 764, 767 (Ct. App. 1995); *Matter of Marriage of Perlenfein*, 316 Or. 16, 848 P.2d 604 (1993); *Miller v. Miller*, 610 So. 2d 183, 185 (La. Ct. App. 1992); *Lawrence v.*

Tise, 107 N.C. App. 140, 419 S.E.2d 176, 181 (1992); *In re Marriage of Wiese*, 41 Kan. App. 2d 553, 203 P.3d 59 (2009).

In light of the foregoing, Jenny asks the Court to reverse Paragraph 2.2 of the Order of Child Support and the Child Support Worksheets, and to remand the case to the trial court for entry of accurate worksheets and order that the trial court make an accurate finding of John's monthly gross income.

C. The trial court erred in finding appellant's monthly net income to be \$7,247.00.

Error is assigned to Paragraph 3.2 of the Order of Child Support and the Child Support Worksheets. CP 132, 140-49. The errors committed by the trial court in calculating John's gross income were repeated in Paragraph 3.2's finding that John's monthly net income was \$7,247.00. Jenny incorporates herein the arguments and authorities in Paragraphs VI A, B, above. Jenny therefore asks the Court to reverse Paragraph 3.2 of the Order of Child Support and the Child Support Worksheets, and to remand the case to the trial court for entry of accurate worksheets and order that the trial court make an accurate finding of John's monthly net income.

D. The trial court erred in finding the transfer payment to be \$1,805.00.

Error is assigned to Paragraph 3.5 of the Order of Child Support and the Child Support Worksheets. CP 133, 140-49. The trial court's finding of a transfer payment of \$1,805.00 is based upon John's net income, which in turn is based upon the faulty finding of his monthly gross income at \$7,247.00. Jenny

incorporates herein the arguments and authorities in Paragraphs VI A, B, above. Jenny therefore asks the Court to reverse Paragraph 3.5 of the Order of Child Support and the Child Support Worksheets, and to remand the case to the trial court for entry of accurate worksheets and order that the trial court make an accurate finding of the transfer payment.

E. The trial court erred in finding the Standard Calculation to be \$1,805.00.

Error is assigned to Paragraph 3.6 of the Order of Child Support and the Child Support Worksheets. CP 134, 140-49. The trial court's finding of a Standard Calculation of \$1,805.00 is based upon John's net income, which in turn is based upon the faulty finding of his monthly gross income at \$7,247.00. Jenny incorporates herein the arguments and authorities in Paragraphs VI A, B, above. Jenny therefore asks the Court to reverse Paragraph 3.6 of the Order of Child Support and the Child Support Worksheets, and to remand the case to the trial court for entry of accurate worksheets and order that the trial court make an accurate finding of the Standard Calculation.

F. The trial court erred in finding the parties' shares of uninsured medical expenses.

Error is assigned to Paragraph 3.19 of the Order of Child Support and the Child Support Worksheets. CP 138, 140-49. The trial court's finding regarding the parties' shares of uninsured medical expenses is based upon John's net income, which in turn is based upon the faulty finding of his monthly gross income at \$7,247.00. Jenny incorporates herein the arguments and authorities in Paragraphs

VI A, B, above. Jenny therefore asks the Court to reverse Paragraph 3.19 of the Order of Child Support and the Child Support Worksheets, and to remand the case to the trial court for entry of accurate worksheets and order that the trial court make an accurate finding of the parties' shares of uninsured medical expenses.

G. The trial court erred in denying appellant's request for attorney and accountant fees.

Error is assigned to Paragraph 3.23 of the Order of Child Support. CP 138.

Attorney fees in a motion to modify child support are governed by RCW

26.09.140:

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorneys' fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs.

The court may order that the attorneys' fees be paid directly to the attorney who may enforce the order in his or her name.

Consideration of the parties' resources is central to the trial court's decision on an award of attorney fees or professional fees. Here, the trial court's error in failing to consider \$2,526.31 in respondent's gross income undermines the trial court's denial of Jenny's request for attorney and accountant fees. *See In re*

Marriage of Bobbitt, 135 Wash. App. 8, 30, 144 P.3d 306 (2006). Jenny demonstrates need for such an award with her monthly net income of \$2,155.00. CP 133; App. 1. Jenny therefore asks the Court to reverse the trial court's Finding 3.23 and remand that case for calculation of an award of attorney fees and accountant fees for Jenny.

H. The trial court erred in denying appellant's motion for reconsideration with regard to the Buschini Income.

Error is assigned to the trial court's Order Denying Petitioner's Motion for Reconsideration. CP 172-74. Jenny incorporates herein the arguments and authorities in Paragraphs VI A, B, above. Jenny therefore asks the Court to reverse the trial court's denial of her motion for reconsideration with regard to the Buschini Income.

I. Appellant requests an award of attorney fees on appeal.

In the event that she prevails on appeal, Jenny requests an award of reasonable attorney fees on appeal pursuant to RCW 26.09.140 and RAP 18.1 (a). Jenny's need for such an award remains the same as in the trial court. John's net income and assets demonstrate the he is in a much better financial position than Jenny. An award of attorney fees to Jenny is therefore appropriate. *Leslie v. Verhey*, 90 Wn. App. 796, 807, 954 P. 2d 330, *rev. den.*, 137 Wash.2d 1003 (1999); *Marriage of Kriger and Walker*, 147 Wn. App. 952, 969, 199 P. 3d 450 (2009).

VII. CONCLUSION

In light of the foregoing, the Court should reverse Paragraphs 2.2, 3.2, 3.5, 3.6, 3.19, and 3.23 and the Child Support Worksheets and remand the case to the trial court for entry of accurate findings and accurate worksheets. The Court should further award Jenny reasonable attorney fees on appeal in the event that she prevails on appeal.

Respectfully submitted,



W. Scott Lowry
WSBA # 6403
Attorney for Appellant

VIII. CERTIFICATE OF MAILING

On this day, the undersigned served the following persons via the United States Mail First Class Postage prepaid with a copy of the foregoing document entitled BRIEF OF APPELLANT as follows:

William C. Schroeder
Paine Hamblen LLP
717 W. Sprague Suite 1200
Spokane, WA 99201

Dated this 8th day of January, 2014

Patricia S. Siuerten