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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 284697-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

In Re the Marriage of:

CAROL MARIE SCHNEIDER, f/k/a CAROL MARIE ALMGREN

Respondent/Petitioner,

v.

JEFFREY JOSEPH ALMGREN,

Appellant/Respondent.

BRIEF OF APPELLANT

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ASSIGNMENTS OF ERROR

1. The Court erred in determining that post-secondary education support should be ordered for the parties' adult child.
2. The Court erred in determining that child support for the parties' minor child should not be reduced based on the fact that both parents had lost their jobs and father was on unemployment from the State of Minnesota.

ISSUES

1. Did the Court abuse its discretion in ordering post-secondary education support for the parties' adult child.
 - A. On appeal, there should be a *de novo* review of the Superior Court's failure to apply the Uniform Interstate Family Support Act. RCW 16.21A.550(3)(4).
2. Did the Superior Court abuse its discretion in failing to reduce child support for the parties' minor child.

A. COURSE OF PROCEEDINGS

The Appellant will be referred to as Mr. Almgren and the Respondent will be referred to as Ms. Schneider.

Carol Marie Schneider, f/k/a Carol Marie Almgren, filed pleadings to domesticate a Nebraska Decree of Divorce from June 6, 1997, and other orders entered on June 22, 1999, and September 4, 2001, so that she could modify child support based on the income of the parties in 2006 and 2007. The Superior Court entered an Order modifying child support on January 16, 2007, under Case No. 05-3-00141-0.

Ms. Schneider filed a Motion to Modify on January 21, 2009, requesting support for post-secondary education for the parties' adult child. Mr. Almgren moved the court to reduce the child support for his minor child. This matter came on for trial on the 14th day of July, 2009. The Court's Findings of Fact and Conclusions of Law and Order for support were entered on September 1, 2009. Mr. Almgren filed a Notice of Appeal to Court of Appeals, Division III, on September 21, 2009.

B. STATEMENT OF THE CASE

On December 5, 2005, Ms. Schneider filed her request to domesticate several Nebraska Orders. The Divorce Decree was dated June 6, 1997, while the others were dated June 22, 1999, August 31, 2001, and September 4, 2001. CP, pp.1-19. The parties have two children, Amanda Almgren, born December 24, 1990, and J.D.A., born October 31, 1993. CP, pp. 2-3. Child support was set by the Nebraska trial court as follows:

“The Respondent shall pay as child support the sum of \$421 per month commencing June 1, 1997, and continuing on the first day of each month thereafter as long as there are two minor children that require support. When there is one minor child requiring support, the child support shall be in the sum of \$293.” (Emphasis added.)

CP, p.3.

At the time of the Nebraska divorce, the age of majority was 19, as it is now. CP, p.310. As a result of Ms. Schneider's domestication of the Nebraska Orders, a motion for modification was filed and an Order was entered by the Court modifying child support for the then minor children of the parties. CP, pp. 20-38. The 2007 Washington Order entered by the Court had a provision regarding post-secondary education support, "The right to petition for post-secondary support is reserved, provided that the right is exercised before support terminates as set forth in paragraph 3.13." CP, p. 25. The reference to the prior paragraph dealt with child support being until the age of 18 or as long as the child remains enrolled in high school. CP, p. 24.

On January 21, 2009, Ms. Schneider petitioned for modification, and alleged that the parties' oldest child, who had turned 18 on December 24, 2008, was in need of post-secondary education support... "because the child is in fact dependant and is relying on the parents for reasonable necessities of life." CP, p.40. (Emphasis added.)

Ms. Schneider filed a financial declaration. Clerk's Record, pp. 42-47. She also filed a declaration, which indicated as follows:

"Amanda resides with me and I provide the majority of her support, therefore the financial aid office at Eastern

Washington University indicated that my spouse and I would be responsible for completing FAFSA application for financial aid.” (Emphasis added.)

CP, p.50.

Financial records for the parents and the adult child were filed with the trial court showing income for the mother from 2005, 2006, 2007, and 2008, for the father from 2007 and 2008, and for the child from 2007 and 2008 with pay stubs for all three through the first or second month of 2009.

CP, pp.67-183.

Mr. Almgren, filed his own motion and a declaration for modification of child support because he was terminated from his employment and would only be receiving a minimal severance package and was applying for unemployment. CP, pp. 244-245. The matter was originally scheduled to be heard on June 19, 2009. RP, Vol. A, pp. 5-20. At that time Mr. Boyles, counsel for the mother, indicated that the issue of the modification had become complicated because of the fact that Mr. Almgren had lost his job. Counsel for Mr. Almgren indicated that both parents had recently lost their jobs and that Mr. Almgren’s situation was more sudden than the mother’s. The Judge indicated, on June 19, 2009, the following: “I mean we have an issue, obviously, that, ah even though folks aren’t making any money right

now, I have to impute some income to them. I still have to calculate some share.” RP, Vol. A, p. 9, ll. 3-6. The Judge then took a recess to allow the parties to discuss a potential resolution, however, the lawyers could not settle the matter and the Court noted on the record that the matter was going to be continued for additional discussions and additional exchange of information. The matter was continued to July 14, 2009, at 1:30 p.m. RP, Vol. A, p. 19, l. 3-4.

The matter was then heard on July 14, 2009, see RP, Vol. B. At the beginning of the hearing, the Court heard opening statements by both the attorneys. The Court asked Ms. Schneider if she wanted to put on any evidence and she declined. Counsel for the father examined Ms. Schneider, Amanda and Mr. Almgren.

Ms. Schneider was called first. She testified that the father of the parties’ children was Jeff Almgren and that they were divorced approximately 12 years ago in the Midwest. RP, Vol. B, p. 14, ll. 2-5. The testimony from the mother noted that she had requested transportation costs of \$1,545.00 for the daughter to attend Eastern Washington University in Cheney. RP, Vol. B, p. 15, ll. 5-6. There was also a notation for tuition and fees of \$5,613.00, and books and supplies noted at \$1,035.00. RP, Vol. B, p. 15. Ms. Schneider did

not know where these amounts came from as they were just estimates from the University and that she didn't know the actual numbers that would be spent for her daughter at college because the numbers were just estimates. RP, Vol. B, p. 16, ll. 12-14.

There was a cost estimate, with the daughter living off campus, for room and board, of \$7,080.00. The daughter would living at an apartment complex called "The Grove". RP, Vol. B, pp. 16-17. See also Mr. Almgren's Ex. R-2. There was also a noted calculation for personal expenses of \$2,163.00, but the mother didn't know exactly what those personal expenses would be or how this number was calculated. RP, Vol. B, p. 19. Ms. Schneider then noted that certain fees had to be recalculated after she notified them that she had lost her job. RP, Vol. B, p. 20, ll. 9-10. A question was asked as follows: "...is there any more recalculation going to be done because dad has lost his job? Have you notified? Answer: No, because it doesn't go based on his, ah, income taxes. It goes based on my income taxes." RP, Vol. B, p. 20, ll. 12-15.

There was a discussion about the Federal Subsidized Stafford Loan. Ms. Schneider explained that it was a loan that her daughter would take out and she didn't have to pay the loan or interest back until she was done with

school. There were questions regarding a Federal Unsubsidized Stafford Loan which required Amanda to start paying interest as soon as she took out the loan. RP, Vol. B, pp. 20-21. Ms. Schneider was also asked if those loans could be forgiven after her daughter graduated from school. Ms. Schneider agreed that the student loans that her daughter would take out could be forgiven. RP, Vol. B, p. 21. The Court had previously heard at the June 19, 2009, hearing the sorts of things that would allow the loan to be forgiven. RP, Vol. A, pp. 12-13.

Ms. Schneider was asked what state she was originally divorced in. She stated Nebraska. RP, Vol. B, p. 25, ll. 6-8. She was then asked, whether the original Decree of Divorce indicated that child support would not go beyond the age of majority. She indicated as follows: "I would assume." RP, Vol. B, ll. 14-17. She then indicated that her daughter was six years old when they got divorced. She also was asked if she pursued the requirements of the law that were available in the State of Nebraska. Her answer was yes. RP, Vol. B, p. 25.

Ms. Schneider then was asked about the job she lost in the State of Idaho. She testified that she was working for the University system in Idaho under a grant funded job through the Department of Health and Welfare. RP,

Vol. B, p. 26. She then was asked about seeking new employment. She responded, "Ah, hopefully, ah, doing something that I was doing. But there is not a lot of jobs out there because my degree is in voc/rehab counseling and that is a state job and the states really aren't hiring right now." RP, Vol. B, p. 26, ll. 18-21.

Ms. Schneider testified that Amanda was employed locally at a location called Evergreen Estates. RP, Vol. B, p. 27. It was also learned that Amanda had a 2002 Mercury Cougar car and that the payments were \$113 per month. It was also learned that Amanda was going to be working at an assisted living place in Cheney or possibly a nursing home. RP, Vol. B, p. 29. Amanda got \$1,400 from graduation from high school and her mother and stepfather bought her a cell phone and a computer and had given her \$1,000 to help purchase the car. RP, Vol. B, pp. 29-31. It was also learned that Amanda was seeking a nursing career. RP, Vol. B, p. 32. A nursing career being one that would allow for the forgiveness of the Stafford loans.

Ms. Schneider testified on July 14, 2009, that she had not received any unemployment from the State of Idaho. She testified,

"No, I have not received any unemployment yet. There is a problem with my unemployment. I applied for unemployment in Idaho, and because I had some wages in Washington, they are wanting me to apply for unemployment

in Washington. So, I've been in contact with Washington and I was actually on the phone with the Idaho Job - -, or, ah, unemployment office before I came here."

RP, Vol. B, p. 32, ll. 24-25 and p. 33, ll. 1-5.

Ms. Schneider then described her employment in the State of Washington as being a junior high cheer coach for the school district in Asotin. RP, Vol. B, p. 33. Mr. Broyles then examined his own client about whether during the course of their marriage, did she and Mr. Almgren ever discuss whether the kids ought to be going to college? Ms. Schneider's response was, "I don't know if we discussed it or not. We got .. when we got divorced, Jacob was three and Amanda was six." RP, Vol. B, p. 38, ll. 6-7. Mr. Broyles asked his client the following, "Ah, even with that, is Amanda going to remain dependant on you and your husband while she is in college? Answer: "Yes, she will." RP, Vol. B, p. 39, ll. 18-20 and 23. There was no evidence presented to the trial court that she was dependent on Mr. Almgren.

Ms. Schneider received two college degrees, one in August of 1994 and then November of 1995, and got divorced in 1997. RP, Vol. B, p. 40.

Mr. Broyles asked Amanda the following: "The basics of life your dependant on your mom and stepdad? Answer: Yeah." RP, Vol. B, p. 50, ll. 10-12.

Mr. Almgren was then called to testify by phone from Minnesota. He testified that he was married and had been married to Karen Almgren for five years and that he lived in St. Cloud, Minnesota, and that for the majority of his life he lived in Minnesota. RP, Vol. B, p. 52. Mr. Almgren was then asked if he was employed and he indicated he was not. RP, Vol. B, p. 52, l. 17. He then described that he worked for Hutchinson technology in Hutchinson, Minnesota, as a waste water systems operator. RP, Vol. B, p. 52. Mr. Almgren indicated he went to a vo-tech school and graduated from this vo-tech school in 2004. His course of study was water environment technologies. He then testified that he was laid off due to lack of work. RP, Vol. B, p. 53. Mr. Almgren described that his employer had also let go of other employees and that there was no hope of regaining his job with his employer. RP, Vol. B, p. 54.

Mr. Almgren then described that he had applied for unemployment through the State of Minnesota on June 11, 2009, and that he was receiving a net of \$375 a week. RP, Vol. B, p. 54, ll. 22-23. He then described receiving an award letter from the state which indicated he would receive from June 7, 2009, through June 5, 2010, \$11,466.00 as his benefit for unemployment. RP, Vol. B, p. 55, ll. 3-5. He then was asked about the

prospects for a job with his qualifications in his area. Mr. Almgren testified as follows: "Well, it's in the same field. It is not very good right now. It doesn't look very good. I've been searching ever since I've been laid off and I've -- and I might have to be going into something else." RP, Vol. B, p. 55, ll. 11-14. He was then asked what the economy was like where he lived. He testified, "It wasn't very good. It's not a very good outlook." RP, Vol. B, p. 55. Mr. Almgren then described his past working history noting that he had went to plumbing school and the last time he was a plumber was in 1989. He noted that he had worked as a water waste operator in the city of St. Francis for a period of four months and he had worked for his last employer for four years and three months. RP, Vol. B, p. 56. He had previously also worked for a company named Eezurria-SFX Valves in Sartell, Minnesota, and that he worked for them for three years as an assembler. RP, Vol. B, p. 56. His job was putting valves together.

Mr. Almgren was asked whether his Decree of Divorce allowed for extra child support once a child turns 18. He indicated he didn't believe so. RP, Vol. B, p. 58.

Mr. Almgren described the sort of contact his daughter had with him in 2009. He was asked if his daughter had sent him a birthday card for his

May birthday. The answer was no. He was asked whether or not she called or sent him letters or emails or the like throughout the course of the year. He answered that last year, 2008, he thinks he would have gotten a phone call from her. He was asked about 2009 and prior to the July hearing. The answer was no. RP, Vol. B, p. 59. He did indicate that he got a graduation announcement. He then described that he had not been involved in any planning regarding her college education. RP, Vol. B, pp. 59-60. He then noted that he had last seen his daughter for three days in the summer of 2008.

Mr. Almgren was asked whether his ex-wife had talked to him about college plans for Amanda and the answer was no and that he didn't have any extra money for support for an adult child based on his financial circumstances. RP, Vol. B, p. 60, ll. 14-20. Mr. Broyles then asked Mr. Almgren about his vo-tech training. He described that he simply got a diploma and that it wasn't an associates degree. RP, Vol. B, p. 61.

The Court then heard argument and decided that child support would remain the same for the parties' youngest child at \$343.87. RP, Vol. B, p. 75, ll. 2-3. The Court noted to the parties,

“Ah, right, now I've got two parents who are out of work, neither of which wanted to be out of work. Ah, and as father's counsel said, we're approaching the worst economy that we've had since The Great Depression. But Washington

law is real clear. Ah, every person - - every, ah, - - has the right to ask their parents to chip in towards their college education if they choose to go to college.

Ah, and so, what do I think is fair in the case as far as do I look just at this instance snapshot that both parents are out of work and set it at minimum wage and let it go when, ah, hopefully in less than six months both parents will rebound and be back having jobs that pay near what they were making before? Ah, to me, I've got to go on, ah, their track record on income, ah, not what some statistic says they are supposed to be able to make. I - - realize I'm allowed to do that, but I choose not to in this case. I'm going to go on what their earnings were, ah, most recently and, ah, calc - - you know, before they lost their jobs. Ah, that's the - - that's the figure I'm using, a, generally."

RP, Vol. B, p. 74, ll. 2-22.

The Court then went on to say, "Ah, but, needless - - the way I'm going to calculate it doesn't matter. I hereby assess as the gross amount the tuition cost of \$5,613, the estimated books and supplies of \$1,035, and the median room and board estimate \$7,080. That is the sum - - add that up. I think it comes to a, \$13,7080. I'm going to round it up to \$15,000. I know there is other expenses." RP, Vol. B, p. 75, ll. 15-21. He then stated,

"I don't find any compelling reason to deviate from my predisposition, if you will. I kind of go 1/3, 1/3, 1/3.

Ah, for dad, I'm going to order to pay yours, ah, at the rate of \$500 per month and that will be for 10 months of each year. Ah, that will be, ah, from September, ah, 1st - - that is your first payment. And you'll pay it through - - what would be - -

ah - - June 1st - - would be your last payment each year.
You'll pay ten payments of \$500 each starting September 1st."

RP, Vol. B, p. 76, ll. 10-19.

The Court then ordered that Mr. Almgren pay that money directly to this daughter. RP, Vol. B, p. 76, ll. 21-22. Mr. Broyles then pointed out to the Court that his order didn't comply with the statute as the statute says you can pay it directly to her or to the school, whichever his choice is. The Judge then said, "Bring it to my attention and I'll be happy to correct it. You know, I have about one of these every two years." RP, Vol. B, p. 80.

There was an inquiry from Mr. Almgren's counsel regarding how the Court verifies that mom is actually paying anything. The Court stated, "Ah, that's real simple. Build it in the paperwork that she's got to provide proof to dad that she is standing for her \$5,000, either through loans or actual payments." RP, Vol. B, p. 81, ll. 7-10. The order the Court signed does not have said provision.

Then Amanda Almgren decided to ask the Court a Question. "Ms. Almgren: What happens if he like misses a payment or something? The Judge responded, "I apologize, ma'am. I couldn't hear." RP, Vol. B, p. 81, ll. 22-25. Amanda Almgren restated her question... "What happens if he like misses a payment or something?" The Court stated, "It is a - - can't give you

legal advice, but it is a lawful court order and someone could file a motion for contempt against him to show cause to me why they should not be held in contempt of court for failure to make the payment. I mean, your lawyer could ex - - or your mom's lawyer could explain some of that stuff to you." RP, Vol. B, p. 82, ll. 5-11.

A notice of presentment hearing was heard on September 1, 2009. Counsel for Mr. Almgren filed a motion to reconsider regarding the issue of the Uniform Interstate Family Support Act, RCW 16.21A.550(3)(4). CP, pp. 305-313. An objection to orders was also filed. CP, pp. 314-316. CP, p. 305. The statute states,

"(3) Except as otherwise provided in RCW 26.21A.570, a tribune of the state may not modify any aspect of a child support that may not be modified under the law of the issuing state. (4) In a proceeding to modify child support order, the law of that state that has determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a clear obligation of support by a tribunal of this state."

CP, pp. 305-306.

The trial court was cited to the age of majority in Nebraska, which is 19 and the Court was given a Nebraska case, *Wills v. Wills*, 16 Neb.App. 559, 745 NW.2d 924 (Neb. Ct.App. 2008), that discussed the Uniform

Interstate Family Support Act, Nebraska's age of majority and the application and purpose of the Uniform Interstate Family Support Act.

At the presentment hearing on September 1, 2009, the Court also heard argument regarding the objection to the Court's finding and its ability to order post high school support. The trial court judge was not present in the court room at the time of the argument. He was on vacation and was appearing by speaker phone. As counsel understood it, he did not have the file and had not reviewed the orders presented. RP, Vol. C, pp. 4-5. The Court, after hearing the argument regarding the Uniform Interstate Family Support Act indicated as follows,

“Certainly the underlying policy of the Uniform statute makes sense. It, ah, obviously would discourage form shopping if somebody got divorced in a state that didn't - - that did not allow post-secondary, ah, support, and then mom and children move to a state that did and then she files for modification asking to - - before the child turns 18, asking for support past 18, or 19 as the case may be.”

RP, Vol. C, p. 10, ll. 7-14.

The Court then noted,

“I agree with attorney Broyles that it's little - - you know the horse has been out of this, ah, gate, ah, far too long for me to go back and, ah, grant motion for reconsideration on jurisdictional grounds at this point. I'm way past that and I respectfully decline to do so, ah, reconsider my jurisdictional argument, and rule that I do have jurisdiction. It is to modify

the order I entered two years ago, not to modify the underlying Nebraska, ah, order of child support or decree.”

RP, Vol. C, p. 12, ll. 4-12.

The order regarding child support has no language regarding the mother providing proof to father of her payments of her share of the \$5,000. The order entered on September 1, 2009, orders that father should continue to pay extraordinary health care expenses for an adult. The order also changes the medical percentages that are noted in the January 16, 2007, child support order. CP, p. 26 and 331. None of this was ordered by the court on July 14, 2009.

The Court never addressed the issue of the tax exemption but the attorney for the mother changed the award of the tax exemption so that mother would get the parties' minor child. The 2007 order indicated that the parties' youngest child would be alternated year to year, with the mother claiming him in even years and father in odd years. CP, p. 25 and 330. The Court entered an order denying the motion to reconsider on September 8, 2009. CP, p. 338. The Notice of Appeal was filed on September 21, 2009. CP, p. 340.

C. ARGUMENT

1.

The Superior Court abused its discretion in Ordering post-secondary education support for the parties' adult child.

The standard of review for the award of child support is an abuse of discretion. The trial court's order will not be reversed unless it is manifestly unreasonable based on untenable grounds or granted for untenable reasons. *In re the Marriage of Schumacher*, 100 Wn.App 208, 997 P.2d 399 (Ct.App. Div. 1 2000). In addition, the reviewing court must determine whether findings of fact are supported by substantial evidence and whether the trial court made an error of law. *Brandli v. Talley*, 98 Wn.App. 521, 523, 991 P.2d 94 (Ct.App. Div. 1 1999).

However, *de novo* review is a requirement in this case. *De novo* review allows the appellate court to decide a question for itself without any deference to the trial court's determination. The *de novo* standard is applied to the trial court's ruling of law. See *In re the Marriage of Fleege*, 91 Wash.2d 324, 588 P.2d 1136 (1979). In this case, the Superior Court made a ruling of law with regard to the application of the Uniform Interstate Family Support Act. The Trial Court's ruling of law involved the application of said Act and its limitation on the court's ability to order support for Amanda

Almgren past the age of 19 as 19 is the age of majority in Nebraska. The Uniform Interstate Family Support Act (UIFSA), 42 USC § 666 has been adopted by every state and governs the procedure for establishing, enforcing, and modifying child support orders.

The evidence is clear that neither parent was employed at the time the Court heard testimony in July 2009. The record is clear that Mr. Almgren had total household expenses of \$3,505.69. CP, pp. 184-189. The record is also clear that Mr. Almgren had income of \$375 per week. RP, Vol. B, p. 54. The trial court also made a finding that the country was “approaching the worst economy that we’ve had since The Great Depression.” RP, Vol. B, p. 74, ll. 4-5.

The record is also clear that the Nebraska divorce decree noted that child support would end at the age of majority. CP, p. 3. It is also clear that the age of majority in Nebraska in 1997, the time of the parties’ divorce, was 19. CP, p. 305-313.

In the Matter of the Marriage of Owen, 126 Wn.App. 487, 108 P.3d 824, (Ct.App. Div 1 2005) *review denied*, 155 Wash.2d 1022 (2005), the Court found, “UIFSA has been adopted by all states and controls the subject matter jurisdiction in this case.” At p. 449. The Court noted, “The Uniform

Interstate Family Support Act (UIFSA), which has been adopted by all states, governs the procedure for establishing, enforcing, and modifying child support and spousal support orders and for determining parentage when more than one state is involved in these proceedings.” (Cite omitted.) At p. 494, footnote 4.

The pertinent part of the Uniform Interstate Family Support Act is found at RCW 26.21A.550(3)(4) (See Appendix 1) which specifically limits the Washington court’s ability to modify child support past the age of majority from the issuing state. Amanda Almgren turns 19 on December 24, 2009. A Washington court’s ability to award post- secondary support is limited by the Uniform Interstate Family Support Act. The trial court in Asotin County should not have ordered support for post-secondary education. The court did not have jurisdiction or did not have authority to enter this sort of support order. There does not seem to be any case law in the State of Washington that comments on these provisions of the Uniform Interstate Family Support Act. However, the State of Nebraska has cases that should be helpful to this Court.

Ms. Schneider domesticated the Nebraska order pursuant to the Uniform Interstate Family Support Act. CP, pp. 1-19. There is nothing on

this record that indicates that Mr. Almgren ever resided, worked or owned property Washington. The Court in *Owen, supra*, noted, “The law of the issuing state governs the nature, extent, amount and duration of current payments and other obligations of support and the payments of arrearage under the under. RCW 26.21.510(1).” At p. 501.

The trial court had additional evidence that Ms. Schneider was providing the majority of support for Amanda. See RCW 26.19.090(2) (See Appendix 2). There is no evidence on this record that Amanda was relying on her Mr. Almgren for the “reasonable necessities of life”. In fact, the record is just the opposite. The parties had no expectation for college when the children were living with both parents during the course of the marriage. See RCW 26.19.090(2). In fact, the mother testified specifically that there was no such discussion. RP, Vol. B, p. 38, ll. 6-7.

Mr. Almgren is a manual laborer and has a vo-tech “diploma” regarding waste water treatment while the mother has two college degrees that were paid for during the course of the marriage. Mr. Almgren got no benefit from that college education as the parties divorced shortly after Ms. Schneider received her last degree. RP, Vol. B, p. 40.

The Court, in this case, failed to take into account Mr. Almgren's level of education, standard of living, and current and future resources. The Court also failed to consider the amount and type of support that the child would have been afforded if the parents had stayed together. RCW 26.19.090(2). If the parties were still married, the parties would both be unemployed and it's pretty likely that unemployed parents couldn't afford to send a child to college.

One of the interesting points in this is that the child was seeking out Stafford federal loans, which she would not have to pay back until she graduate. The Superior Court ordered Mr. Almgren to pay \$500 per month for 10 months a year to the college or Amanda for her costs of schooling. The equity in this doesn't seem very apparent on the surface. The only one who seems to be paying any money at the present time is Mr. Almgren. There is no indication that Amanda Almgren is paying anything or that Ms. Schneider is paying anything toward Amanda's schooling at college.

The 2007 Washington order reserved the issue of post high school education. Under the terms of the statute in Nebraska, support for Amanda would continue until she turned 19. At the time of the order in 2007 there was no clear indication that she would be going to college. The Washington

Court, pursuant to the Uniform Interstate Family Support Act had jurisdiction to allow child support to continue until December 2009. However, the standard for support for Amanda, after high school, would not be pursuant to RCW 26.19.090, it would have been pursuant to the standards for child support which are found at RCW 26.19.001, RCW 26.19.020 and RCW 26.19.035.

It was argued to the Superior Court that it did not have jurisdiction to extend support past the age of majority in Nebraska. There is an interesting discussion in *In re the Marriage of Major*, 71 Wn.App. 531, 534, 859 P.2d 1262 (Ct.App. Div. 1 1993) regarding jurisdiction. It is submitted that the Superior Court does not have jurisdiction to award any form of child support to either Almgren children past the age of 19, pursuant to the Uniform Interstate Family Support Act, RCW 26.21A.550(4),

“In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor’s fulfillment of the duty of support established by the order precludes imposition of a further obligation of support by a tribunal of the state.” (Emphasis added.)

The Superior Court Judge clearly overstepped his “jurisdiction” or his authority in awarding post-secondary education support for the benefit of Amanda Almgren.

The Washington appellate courts have determined that a modification regarding post-secondary support may only be made upon a showing of “compelling” circumstances. *In re Marriage of Gimlett*, 95 Wash.2d 699, 629 P.2d 450 (1981), and after consideration of statutory factors found in RCW 26.19.090 *In re Marriage of Scanlon*, 109 Wn.App. 167, 180-181, 34 P.3d 877 (Ct.App. Div. 1 2001). A compelling circumstance in this case is the fact that Mr. Almgren went from making approximately \$3,300 per month to \$375 per week. The Washington appellate courts have also determined that Washington superior courts are courts of general jurisdiction, they lack subject matter jurisdiction only “under compelling circumstances, such as when it is explicitly limited by the legislature or congress.” *In the Matter of the Marriage of Thurston*, 92 Wn.App. 494, 498, 963 P.2d 947 (Ct.App. Div 1 1988) quoting *In re Marriage of Major*, 71 Wn.App. 531, 534, 859 P.2d 1262 (1993), rev. denied 137 Wash.2d 1023 (1999). Congress and the legislature, with the passage of the Uniform Interstate Family Support Act, limited the Superior Court’s jurisdiction.

A party may raise subject matter jurisdiction for the first time on appeal. Judge Acey was advised during the course of the hearing in July, and obviously at the hearing on September 1, 2009, about the limitation from the Nebraska decree and the Uniform Interstate Family Support Act. The trial court choose to mistakenly find “jurisdiction” to extend child support past Nebraska’s age of majority, which is 19. The trial court, in 2007, had the ability to modify child support since it had not been modified since the 1997 decree. However, the trial court did not have jurisdiction to extend child support past the age of 19.

This Court can rely on case law from other states if there is no case law in Washington regarding the issues raised involving the Uniform Interstate Family Support Act. This Court can note *Reinsch v. Reinsch*, 259 Neb. 564, 611 NW.2d 86 (Neb.S.Ct. 2000), which discusses the enactment of the Nebraska child support guidelines in October of 1987 and the fact that in Nebraska that the age of majority was 19. The *Reinsch* Court stated, “Specifically, the Court of Appeals concluded the enactment of section 42-371.01 in 1997 was a material change in circumstance and reason that ‘while the age of majority was 19 when the court first entered the decree, the statutory law has now changed to make child support to age 19 mandatory

unless the child is emancipated'." *Reinsch v. Reinsch*, 8 Neb.App. 852, 856, 602 N.W.2d 261 (Neb.Ct.App. 1999). The Supreme Court of Nebraska disagreed with the Court of Appeals on the *Reinsch* case and held that the enactment of section 42-371.01 in 1997 delineating the circumstances for terminating child support, was not tantamount to a material change in circumstance justifying modification of a child support award. However, the Nebraska Supreme Court went on to find that the trial court did not abuse its discretion when it found a material change of circumstance that justified a modification of child support and the duration. In Nebraska, the public policy of the state provided that parents have a duty to support their minor children until they reach majority or are emancipated. *Waldbaum v. Waldbaum*, 171 Neb. 625, 107 N.W.2d 407 (1961).

The Nebraska statute specifically notes that child support terminates when the child reaches 19 years of age, marries, dies or is emancipated by a court of competent jurisdiction. Nebraska RS 42-371.01. (See Appendix 3).

The Superior Court had no ability to order child support for Amanda Almgren past the age of 19. This court can also look at the *Wills* case, which was attached to the Motion to Reconsider regarding Nebraska's application of a foreign states child support order. CP, p. 308. In *Wills*, the original

child support order came from New Mexico, which had 18 years of age as the termination age for child support while Nebraska had 19 years. The Nebraska court determined that the 18 year time frame barred the Nebraska court from ordering child support past the age of 18. This Court, in looking at the Uniform Interstate Family Support Act, has to look at the statute's purpose and give to the statute a reasonable construction which best achieves that purpose rather than a construction which would defeat it. Judge Acey's decision defeats the purpose of the Uniform Interstate Family Support Act.

Concluding that the legislature intend to make only the economic table advisory when setting post-secondary support, the court in *In re the Marriage of Daubert*, 124 Wn.App. 483, 99 P.3d 401 (Ct.App. Div 1 2004) held that the post-secondary support must be apportioned according to the net income of the parents absent a reason to deviate.

The Superior Court did not follow the standards set out in RCW 26.19.090 for post-secondary education support. One factor from this statute requires that a dependent adult child be relying upon "the parents" for the reasonable necessities of life. On this record, the testimony was that Mr. Almgren had very little contact with this daughter. His daughter failed to keep any meaningful contact with him, even after she became an adult.

Both Ms. Schneider and Amanda Almgren testified that the reasonable necessities of life were being supplied by Ms. Schneider and not Mr. Almgren. RP, Vol. B, pp. 39, 50. See also CP, p.50. The statutory factor regarding the expectation of the parties for their children when the parents were together is not found on this record. The parties were divorced when Amanda was six and as a result there was no expectation regarding college during the course of the marriage. The trial court also clearly failed to take into account the current economic environment. Mr. Almgren has a blue collar type education. His standard of living is reduced considering his lack of income. His current and future resources are also limited. The trial court clearly abused it's discretion in allowing post-secondary education support considering the factors that are set out.

It is rather cavalier for the trial court to simply say that in "the worst economy since The Great Depression" that a parent is just going to bounce back in six months. It is probably easy for an elected judge, who has no possibility of having his job terminated by his employer, to make the sort of comment. It is submitted that the trial court judge in this case doesn't live in the real world and simply decided his "predisposition" should be applied in this particular case, disregarding completely the facts that were presented.

2.

The Superior Court abused its discretion in failing to reduce child support for the parties' minor child.

The Superior Court's findings and conclusions do not justify an award of child support in excess of the maximum amount set forth on the child support economic table. See RCW 26.19.020. The statute sets forth the schedule from which basic child support obligations for dependent minor children are determined in relation to the parents combined monthly net income.

The trial court did not note a deviation from the basic child support obligation even though both parties are unemployed and both parties testified about the difficulty to find work. RP, Vol. B, p.26, ll. 18-21 and p.55. The trial court disregarded this testimony and just assumed that in six months the parties could find employment in "the worst economic environment since The Great Depression". RP, Vol. B, p. 74, ll. 3-5. There is nothing on this record that indicates that the Court's determination that the parties would bounce back within six months is justified. One simply has to look at the morning newspapers to know that, in fact, the trial court's assessment is incorrect. The trial court judge had no information that Mr. Almgren could

simply bounce back within six months. In fact, the testimony was just the opposite, that he wouldn't be able to find employment.

There was a substantial and material change in circumstances regarding the employment of the parties. They both were unemployed at the time of the July 2009 hearing. In addition, the Court recognized the dire financial condition of the country.

The child support worksheet that was entered by Mr. Broyles on behalf of the mother is fiction. CP, pp. 333-337. The father's wages and salaries are noted as "imputed" at \$3,826 while the mother's income is noted at \$3,664. That information is not found on this record as being current income.

It should be noted that imputing of income applies when parents are voluntarily unemployed or underemployed. RCW 26.19.071(6). See *In re the Marriage of Brockopp*, 78 Wn.App. 441, 898 P.2d 849 (Ct.App. Div 2 1995). This court should consider the parents' work history, education, health and age and any other relevant factor. Mr. Almgren's lack of employment was not due to him voluntarily quitting his job. He was terminated from his position because there was no work available. Income will not be imputed to an unemployed parent. See *In re the Marriage of*

Blickenstaff, 71 Wn.App. 489, 859 P.2d 646 (Ct.App. Div 2 1993). If income is going to be imputed, it should be imputed at the level at which the parent is capable and qualified. See *In re Shellenberger*, 80 Wn.App. 71, 906 P.2d 968 (Ct.App. Div 1 1995). The Superior Court in Asotin County simply disregarded the statutory scheme and case law regarding modification of child support. Child Support for the parties remaining minor child, should have been modified downward to reflect Mr. Almgren's unemployment income. The mother's income was unknown because she had not started receiving unemployment. RP, Vol. B, pp. 32-33.

Washington appellate courts have determined that in applying RCW 26.19.080(1) the trial court must determine each parent's proportion of combined net income before allocating support between them. *Newell v. Newell*, 117 Wn.App. 711, 72 P.3d 1130 (Ct.App. Div 1 2003).

In this situation, Mr. Almgren's income is quite limited. The Superior Court did not bother to apply the percentage cap on the child support order. RCW 26.19.065(1) places a cap of 45% on the amount from one parent's income that can be used for all child support including post-secondary support and support for minor children. The Court ordered Mr. Almgren to pay \$843.87 for ten months and \$343.87 for twelve months; i.e. \$5,000 plus

\$4,126.44 for a total of \$9,126.44. Mr. Almgren testified that his unemployment award for the year was \$11,466. Therefore, the child support awarded would be approximately 80% of his unemployment income. Even the Washington Family Law Desk Book notes that the Uniform Interstate Family Support Act requires the law of the initiating state to govern the nature, extent, amount and duration of the child support obligation. *See* Child Support Section 28.12(3).

There is nothing on this record that supports the Trial Court's decision to keep child support for the parties' minor child at the \$343.87 amount. In addition, the record does not support the Judge's determination that Mr. Almgren should pay \$5,000 per year until Amanda turns 23 for post-secondary education support.

The child support statutes and schedule imposes particular requirements on the trial court and its finding. Failure to comply with the statutory requirements that the trial court state the amount of child support calculated using the standard calculation. The trial court must also, in writing, state the specific reasons for any deviation from the statutory requirements. If this is not done, the decision will result in reversal on appeal. *State v. Sigler*, 85 Wn.App. 329, 932 P.2d 710 (Ct.App. Div. 3

1997). It is clear from the record that the court failed to enter findings that are supported by substantive evidence.

D. CONCLUSION

The Court committed error regarding the child support for the parties' minor child in that it did not consider the statutory requirements as set out by Title 26 RCW. In addition, the Superior Court committed an error of law and abused its discretion by ordering post-secondary support. Mr. Almgren is unemployed during the worst economy since The Great Depression. The Uniform Interstate Family Support Act limits the Washington court's ability to order child support of any kind for Amanda Almgren past the age of 19. Her birthday is December 24, 1990, which makes her 19 on December 24, 2009. This court, on appeal, must complete a *de novo* review of this issue regarding the application of the Uniform Interstate Family Support Act.

The matter should be remanded to the Superior Court with instructions that the court account for any monies paid by Mr. Almgren for the support of his minor child and his adult child. The trial court must then recalculate child support based on the parties' income using standards set out in the Washington statutory scheme. Any monies over paid by Mr. Almgren should be applied to future child support obligations for the parties' minor

child. With this instruction to the lower court the harm is limited because if Ms. Schneider is still unemployed, it won't put an undue hardship on her of having to pay Mr. Almgren back the over paid amounts.

Counsel for Mr. Almgren has not found a case in either Nebraska or Washington that allows for an increase in child support in a circumstance found on this record. Both parties became unemployed because of the economic downturn with Mr. Almgren, the obligor, being basically a blue collar worker who has limited education and job skills. A simple vo-tech certificate does not amount to much in today's dismal economy, especially for someone living in the Midwest.

DATED this 11th day of December, 2009.

Respectfully submitted,

s/Charles M. Stroschein

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E. APPENDIX

APPENDIX 1

RCW 26.21A.550

Modification of child support order of another state.

(1) If RCW 26.21A.560 does not apply, except as otherwise provided in RCW 26.21A.570, upon petition a tribunal of this state may modify a child support order issued in another state which is registered in this state if, after notice and hearing the tribunal finds that:

(a) The following requirements are met:

(i) The child, the obligee who is an individual, and the obligor do not reside in the issuing state;

(ii) A petitioner who is a nonresident of this state seeks modification; and

(iii) The respondent is subject to the personal jurisdiction of the tribunal of this state; or

(b) This state is either the state of residence of the child or of a party who is an individual subject to the personal jurisdiction of the tribunal of this state, and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

(2) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(3) Except as otherwise provided in RCW 26.21A.570, a tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If two or more tribunals have issued child support orders for the same obligor and same child, the order that controls and must be so recognized under RCW 26.21A.130 establishes the aspects of the support order that are nonmodifiable.

(4) In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state.

(5) On issuance of an order by a tribunal of this state modifying a child support order issued in another state, the tribunal of this state becomes the tribunal having continuing, exclusive jurisdiction.

[2002 c 198 § 611.]

Notes:

Effective date -- 2002 c 198: See RCW 26.21A.900.

APPENDIX 2

RCW 26.19.090
Standards for postsecondary educational support awards.

(1) The child support schedule shall be advisory and not mandatory for postsecondary educational support.

(2) When considering whether to order support for postsecondary 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 postsecondary 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 postsecondary education sought; and the parents' level of education, standard of living, and current and future resources. Also to be considered are the amount and type of support that the child would have been afforded if the parents had stayed together.

(3) The child must enroll in an accredited academic or vocational school, must be actively pursuing a course of study commensurate with the child's vocational goals, and must be in good academic standing as defined by the institution. The court-ordered postsecondary educational support shall be automatically suspended during the period or periods the child fails to comply with these conditions.

(4) The child shall also make available all academic records and grades to both parents as a condition of receiving postsecondary educational support. Each parent shall have full and equal access to the postsecondary education records as provided in RCW 26.09.225.

(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.

(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.

[1991 sp.s. c 28 § 7; 1990 1st ex.s. c 2 § 9.]

Notes:

Severability -- Effective date -- Captions not law -- 1991 sp.s. c 28: See notes following RCW 26.09.100.

Effective dates -- Severability -- 1990 1st ex.s. c 2: See notes following RCW 26.09.100.

APPENDIX 3

42-371.01. Duty to pay child support; termination, when; procedure; State Court Administrator; duties.

(1) An obligor's duty to pay child support for a child terminates when (a) the child reaches nineteen years of age, (b) the child marries, (c) the child dies, or (d) the child is emancipated by a court of competent jurisdiction, unless the court order for child support specifically extends child support after such circumstances.

(2) The termination of child support does not relieve the obligor from the duty to pay any unpaid child support obligations owed or in arrears.

(3) The obligor may provide written application for termination of a child support order when the child being supported reaches nineteen years of age, marries, dies, or is otherwise emancipated. The application shall be filed with the clerk of the district court where child support was ordered. A certified copy of the birth certificate, marriage license, death certificate, or court order of emancipation or an abstract of marriage as defined in section 71-601.01 shall accompany the application for termination of the child support. The clerk of the district court shall send notice of the filing of the child support termination application to the last-known address of the obligee. The notice shall inform the obligee that if he or she does not file a written objection within thirty days after the date the notice was mailed, child support may be terminated without further notice. The court shall terminate child support if no written objection has been filed within thirty days after the date the clerk's notice to the obligee was mailed, the forms and procedures have been complied with, and the court believes that a hearing on the matter is not required.

(4) The State Court Administrator shall develop uniform procedures and forms to be used to terminate child support.

Source: Laws 1997, LB 58, § 1;Laws 2000, LB 972, § 16;Laws 2006, LB 1115, § 30.

Annotations

- The enactment of this section in 1997 delineating the circumstances for terminating child support obligations is not tantamount to a material change in circumstances justifying modification of a child support award. *Reinsch v. Reinsch*, 259 Neb. 564, 611 N.W.2d 86 (2000).
- It is the public policy and statutory law of this state that child support obligations should be paid until the child reaches the age of 19. *Reinsch v. Reinsch*, 8 Neb. App. 852, 602 N.W.2d 261 (1999).